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SUPREME COURT OF THE STATE OF WASHINGTON

CITIZENS FOR RATIONAL SHORELINE PLANNING, a Washington
Nonprofit Corporation, and RONALD T. JEPSON, an individual,

Petitioners,

v.

WHATCOM COUNTY, a municipal corporation of the State of
Washington, the WHATCOM COUNTY COUNCIL, and the STATE OF
WASHINGTON, DEPARTMENT OF ECOLOGY,

Respondents.

**SUPPLEMENTAL BRIEF OF RESPONDENT STATE OF
WASHINGTON DEPARTMENT OF ECOLOGY**

ROBERT M. MCKENNA
Attorney General

KELLY T. WOOD, WSBA #40067
KATHARINE G. SHIREY, WSBA #35736
Assistant Attorneys General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6770

FILED AS
ATTACHMENT TO EMAIL

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ISSUE PRESENTED2

III. ARGUMENT2

 A. Shoreline Master Programs Constitute State Action Not
 Subject To Challenge Under RCW 82.02.020.....2

 1. Plain Language And Structure Of SMA Establish
 That Master Programs Are The Product Of State
 Action3

 2. RCW 82.02.020 Applies Only To Local
 Government, *Not State*, Imposition Of Development
 Restraints8

 B. Prior Decisions Of This Court Support The Conclusion
 That Master Programs Are The Product Of State Action10

 1. *Orion Corp. v. State’s* Pronouncement That Local
 Governments Act As Agents Of The State In
 Proposing Master Programs Is Equally Compelling
 In This Case.....10

 2. *Biggers v. City of Bainbridge Island* Recognized
 That The State Maintains Ultimate Control Over
 Master Programs.....14

 C. Applying RCW 82.02.020 To Master Programs Would
 Operate As A Significant Expansion Of Both The Statute
 And Its Construction By The Courts15

 D. CRSP’s Attempts To Discount State’s Role In Shoreline
 Regulation Are Unavailing17

IV. CONCLUSION20

Appendix A – WAC 173-16-010 to -050

Appendix B – 1982 Final Legislative Report, 47th Leg., pp. 206-08

TABLE OF AUTHORITIES

Cases

<i>Biggers v. City of Bainbridge Island</i> 162 Wn.2d 683, 169 P.3d 14 (2007).....	14, 15, 18
<i>Buechel v. Dep't of Ecology</i> 125 Wn.2d 196, 884 P.2d 910 (1994).....	11
<i>Citizens for Rational Shoreline Planning v. Whatcom Cy.</i> 155 Wn. App. 937, 230 P.3d 1074 (2010).....	5, 14, 17
<i>Citizens' Alliance For Property Rights v. Sims</i> 145 Wn. App. 649, 187 P.3d 786 (2008) (CAPR), review denied, 165 Wn.2d 1030, 203 P.3d 378 (2009).....	17
<i>Fahn v. Cowlitz Cy.</i> 93 Wn.2d 368, 610 P.2d 857 (1980).....	19
<i>Harvey v. Board of Cy. Comm'rs of San Juan Cy.</i> 90 Wn.2d 473, 584 P.2d 391 (1978).....	4
<i>Isla Verde Int'l Holdings, Inc. v. City of Camas</i> 146 Wn.2d 740, 49 P.3d 867 (2002).....	16, 17
<i>Orion Corp. v. State</i> 109 Wn.2d 621, 747 P.2d 1062 (1987).....	10, 11, 12, 13
<i>R/L Assocs., Inc. v. City of Seattle</i> 113 Wn.2d 402, 780 P.2d 838 (1989).....	8
<i>Samuel's Furniture, Inc. v. Dep't of Ecology</i> 147 Wn.2d 440, 54 P.3d 1194 (2002).....	6, 11

Statutes

RCW 36.70A.170(2).....	4
RCW 36.70A.480(1).....	18

RCW 82.02	19
RCW 82.02.020	<i>passim</i>
RCW 90.58.050	9
RCW 90.58.060	4
RCW 90.58.070	6
RCW 90.58.070–.080	3
RCW 90.58.090	4, 9
RCW 90.58.090(2).....	5
RCW 90.58.090(2)–(4)	4
RCW 90.58.090(2)–(6)	5
RCW 90.58.090(2)(e)	6
RCW 90.58.090(4).....	13
RCW 90.58.090(7).....	6, 9
RCW 90.58.140(6).....	7
RCW 90.58.140(10).....	7
RCW 90.58.210(1)–(2)	8
RCW 90.58.260	8
Laws of 1982, 1st Ex. Sess., ch. 49, § 5.....	15
Laws of 1995, ch. 347.....	18
Laws of 1995, ch. 347, § 104(1)	18

Laws of 1995, ch. 347, § 308.....	13
42 U.S.C. § 9621(e)(1)–(2).....	7

Other Authorities

1982 Final Legislative Report, 47th Leg. (Wash. 1982).....	15
S.B. Rep. on Engrossed Substitute H.B. 1724, 54th Leg., Reg. Sess. (Wash. 1995).....	13, 18
<i>Webster’s Third New International Dictionary</i> (2002)	9

Regulations

former WAC 173-16-040(5).....	12
former WAC 173-16-050(5).....	12
WAC 173-26-020(32).....	12
WAC 173-26-100.....	4, 5
WAC 173-26-100(5).....	4
WAC 173-26-186.....	19
WAC 173-26-186(5).....	18
WAC 173-26-201(2)(c)	12
WAC 173-26-221(2)(c)(iii)(B)	12
WAC 173-26-221(5)(b)	12
WAC 173-26-241(3)(f).....	12
WAC 173-26-241(3)(j)	12
WAC 173-27-060.....	6

I. INTRODUCTION

The Shoreline Management Act (SMA) is premised upon the fact that the shorelines of the state are among the most valuable and fragile of the state's natural resources. As such, the SMA establishes a cooperative program of shoreline management between the state and local governments to protect and preserve the shoreline and prevent uncoordinated and piecemeal development. Pursuant to this framework, each local government with "shorelines of the state" must have a "shoreline master program" (master program), a comprehensive use plan developed in conformance with the policies of the SMA. The state, through the Department of Ecology (Ecology), works closely with local governments to develop and implement master programs. However, the state reserves ultimate approval and enactment of master programs to itself, and, once approved, the cumulative master programs constitute the state's use regulations for its various shorelines.

Petitioners, Citizens for Rational Shoreline Planning and Ronald T. Jepson (hereinafter "CRSP"), challenged a comprehensive amendment to Whatcom County's master program under RCW 82.02.020, which prohibits local governments from "impos[ing] any tax, fee, or charge" on the development of land. CRSP now contends that the Court of Appeals and the trial court erred in concluding that shoreline master programs are a

product of state action, and therefore are not constrained by RCW 82.02.020. CRSP is incorrect.

As correctly determined by the Court of Appeals, the pervasive level of state oversight and control over the master program adoption process, as well as the state's paramount interest in the regulation of its shorelines, mean that state-approved master programs are the product of state action. In short, local governments merely *propose* shoreline master programs for state approval. The ultimate act of *imposing* such programs is by the state. The State respectfully requests that this Court affirm the holding of the Court of Appeals.

II. ISSUE PRESENTED

Are shoreline master programs imposed by the state, and therefore not subject to RCW 82.02.020, when master programs are the product of pervasive state oversight and control, require state action before taking effect, and expressly become part of the state's overall shoreline protections once approved?

III. ARGUMENT

A. Shoreline Master Programs Constitute State Action Not Subject To Challenge Under RCW 82.02.020

The unambiguous structure of the SMA establishes that the imposition of master programs is a product of state action. Once enacted,

master programs become the state's shoreline use regulations as part of the "state master program." Because RCW 82.02.020 does not apply to action by the state, the Court of Appeals should be affirmed.

1. Plain Language And Structure Of SMA Establish That Master Programs Are The Product Of State Action

Master programs are part of the SMA's coordinated, state-wide program of shoreline management between the state and local governments. Pursuant to this program, the state: (1) sets the parameters and deadlines for master program adoption and amendment; (2) is substantially and directly involved with the local government during the planning and drafting phase; (3) is given sole and final authority over whether to approve, modify, or reject a local government proposal; (4) may bypass local governments if necessary; (5) adopts approved master programs as state regulations; and (6) plays a significant role in implementation of the state's collective master programs once approved.

Master program adoption begins and ends with the state. The SMA mandates that all local governments with "shorelines of the state" within their jurisdictions develop and propose master programs for approval by Ecology. RCW 90.58.070-.080. Before master programs are even proposed, however, Ecology sets the parameters for master program development by establishing comprehensive guidelines to which all draft

master programs must conform.¹ See RCW 90.58.060, .090. Because Ecology has ultimate approval authority, local governments that deviate from these guidelines risk having Ecology reject their programs.

Ecology is also deeply involved with local governments throughout the planning and drafting of master programs. Because Ecology has ultimate authority over master programs, local governments are encouraged to engage with Ecology from the earliest stages of planning. WAC 173-26-100. Local governments are also required to solicit comments from Ecology before submitting a draft master program to Ecology for review. WAC 173-26-100(5). In this case, Ecology participated throughout the local planning process as a member of the County's master program Technical Advisory Committee. See CP at 102.

Ecology does not serve as a rubber stamp for proposals. *Harvey v. Board of Cy. Comm'rs of San Juan Cy.*, 90 Wn.2d 473, 475, 584 P.2d 391 (1978). Once Ecology receives a draft program, Ecology must provide state-wide public notice, take comments, and conduct a public hearing if

¹ The importance of Ecology's master program guidelines is illustrated in this case. CRSP specifically challenges the master program provisions relating to shoreline setbacks. As discussed in Section III.B.1 below, however, Ecology's guidelines require shoreline setbacks. Additionally, the guidelines demonstrate the state's unique interest in its shorelines. Unlike guidelines adopted by the Department of Commerce for planning under the Growth Management Act (GMA), local governments are required to follow Ecology guidelines in developing master programs. Compare RCW 36.70A.170(2) (requiring only that local governments "consider" Department of Commerce guidelines) with RCW 90.58.090(2)-(4) (stating that proposed master programs cannot be approved by the state unless fully compliant with Ecology guidelines).

necessary.² RCW 90.58.090(2). Ecology must then make written findings and conclusions concerning the consistency of the master program with the SMA and the guidelines. RCW 90.58.090(2).

Ecology is solely responsible for the determination that a master program is compliant and may modify or reject a master program proposal where necessary. RCW 90.58.090(2)–(6). As noted by the Court of Appeals, neither the SMA nor the guidelines mandate any deference to the local government’s proposal; indeed, any deference given is only the degree that “good management, intergovernmental civility, and political considerations dictate.” *Citizens for Rational Shoreline Planning v. Whatcom Cy.*, 155 Wn. App. 937, 947, 230 P.3d 1074 (2010) (*Citizens*). In this case, Ecology determined that Whatcom County’s draft master program was not fully compliant and provided the County with 13 pages of mandatory changes. CP at 3. Among these changes, Ecology modified the building area restrictions that CRSP now argues violate RCW 82.02.020.³ See CP at 78.

² In this case, Ecology conducted a public hearing on Whatcom County’s master program draft in 2007. CP at 104. This hearing was in addition to the public hearings conducted by the County as mandated by Ecology regulations. See WAC 173-26-100.

³ Below, CRSP asserted that Ecology’s changes in this regard were insignificant because Ecology was revising a draft when it modified the building area restriction. Regardless of the procedural point at which the provision was drafted, it is beyond dispute that the building area restrictions now contained in the County’s master program resulted from Ecology’s authority to review and modify draft master programs.

Where, as in this case, Ecology makes revisions to a local government's proposal, the local government must accept Ecology's changes or submit an alternative proposal that addresses Ecology's concerns. RCW 90.58.090(2)(e). If a local government fails to comply, Ecology may completely bypass the local government and unilaterally adopt a master program via formal rulemaking. RCW 90.58.070.

Most critically, a master program takes effect only "when and in such form as approved or adopted by [Ecology]." RCW 90.58.090(7).

Once approved, master programs "constitute [the] use regulations for the various shorelines of the state" as part of the "state master program." *Samuel's Furniture, Inc. v. Dep't of Ecology*, 147 Wn.2d 440, 448, 54 P.3d 1194 (2002) (alteration original). The state master program is not merely a catalog of approved programs. The state master program, which incorporates local master programs as part of the state's substantive shoreline regulations, is vital in allowing the state to regulate federal activities in state waters and on state shorelines. For example, Washington has incorporated the SMA and all regulations adopted under its authority (including master programs) into its Coastal Zone Management Program, *see* WAC 173-27-060, thus enabling the state to enforce such provisions against federal activities in state waters. The status of master programs as state regulations also permits the state to

implement their provisions in federal remedial actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). *See* 42 U.S.C. § 9621(e)(1)–(2) (exempting federal remedial actions from all state and local land use permits, but allowing a state to file suit to enforce any “State standard, requirement, criteria, or limitation ...”).⁴

State involvement does not end with master program enactment. The state remains crucial to the implementation and enforcement of approved programs. Ecology has direct review and final approval authority over two of the three types of permits available for shoreline development (namely, conditional use permits and variances). RCW 90.58.140(10). And while Ecology does not have final authority over the third type of permit (the substantial development permit), all such permits must be forwarded to both Ecology and the Attorney General’s Office, which then have explicit, independent authority to appeal the permits.⁵ RCW 90.58.140(6). Thus, *all* shoreline permitting decisions in the state are scrutinized by the state, with a significant percentage issuing only after express state approval.

⁴ For a detailed explanation, please see State’s response brief before the Court of Appeals at pp. 25-28.

⁵ The fact that the SMA ensures that *two* state agencies receive a copy of every shoreline permit issued in the state provides clear evidence of the unique nature of master programs (as well as shoreline regulation in general) and severely undercuts CRSP’s assertion that the state’s role in the enforcement of master programs is “limited.”

Finally, the state has explicit authority to enforce any provision of the state master program by bringing actions to ensure compliance or issuing civil penalties for permit violations. RCW 90.58.210(1)–(2). As noted above, the state is also exclusively tasked with representing the state’s interest with regard to the SMA (including any master program provisions) against the federal government. RCW 90.58.260.

In sum, master programs are the product of state action and constitute state, not merely local, regulation.

2. RCW 82.02.020 Applies Only To Local Government, Not State, Imposition Of Development Restraints

RCW 82.02.020 generally provides that the state preempts local governments’ ability to impose certain taxes. Relevant to this case, the statute provides that “no county, city, town, or other municipal corporation shall impose any tax, fee, or charge” on the development of land. RCW 82.02.020 (emphasis added). This language is unambiguous. RCW 82.02.020 does not prohibit the state from imposing exactions that would be prohibited if imposed by a unit of local government. *R/L Assocs., Inc. v. City of Seattle*, 113 Wn.2d 402, 407 n.2, 780 P.2d 838 (1989).

The statute does not define what constitutes “imposing.” However, in its ordinary meaning, to “impose” is “to cause to be burdened ... to make, frame, or apply (as a charge, tax, obligation, rule, penalty) as

compulsory, obligatory, or enforceable.” *Webster’s Third New International Dictionary* 1136 (2002) (emphasis added). As described above, the only action that makes a master program apply as “compulsory, obligatory, or enforceable” is the act of approval by the state. *See* RCW 90.58.090(7). In fact, although local governments are charged with administering⁶ master programs once imposed, they are statutorily incapable of imposing master programs. *See* RCW 90.58.090. Because the state is the only entity that may impose a master program, and local governments may only propose such programs for state approval, RCW 82.02.020 does not apply by its plain terms.

While the state’s ultimate enactment of master programs is determinative by itself, the conclusion that RCW 82.02.020 does not apply to state-approved master programs also finds ample support in the totality of the state’s pervasive role in shoreline regulation. As noted above, this role includes governing the content of master programs and enforcing their provisions once enacted. It is also reflected in the status of master programs as part of the state’s shoreline use regulations once approved. Put simply, shoreline master programs are the product of state action. The

⁶ The SMA does not define “administering” for purposes of RCW 90.58.050’s enunciation of general responsibilities under the SMA. Under a plain reading, however, the authority to *administer* an approved master program does not equate to *imposing* that master program. *See Webster’s Third New International Dictionary* 27 (2002) (defining “administer” as “to direct or superintend the execution, use, or conduct of”).

Court of Appeals correctly concluded that RCW 82.02.020 does not apply to them.

B. Prior Decisions Of This Court Support The Conclusion That Master Programs Are The Product Of State Action

While the issue of whether RCW 82.02.020 applies to master programs is one of first impression, this Court has previously examined both the status of master programs and the relationship established between the state and local governments under the SMA. In each instance, this Court has recognized that, while the SMA undoubtedly delegates some aspects of shoreline regulation to local governments, the SMA also embodies the state's unique and paramount role in the adoption of master programs and the regulation of state shorelines.

1. *Orion Corp. v. State's Pronouncement That Local Governments Act As Agents Of The State In Proposing Master Programs Is Equally Compelling In This Case*

Most notably, in *Orion Corp. v. State*, this Court examined a takings claim leveled against the state and Skagit County arising from provisions contained in Skagit County's master program. *Orion Corp. v. State*, 109 Wn.2d 621, 624-25, 747 P.2d 1062 (1987). This Court found that the County could not be held liable for a regulatory taking because in developing a master program, the County acted "under the direction and control of the State." *Id.* at 643. In fact, this Court found the process so

saturated with state involvement that it likened the state/local relationship created by the SMA to that of a principal and agent. *Id.* at 644. In doing so, this Court emphasized that master programs are ineffective until adopted or approved by Ecology and that, once approved, the County's master program "became state regulation."⁷ *Id.* at 643. This Court then held that "[b]ecause the County acted at the instance of and, in some material degree, under the direction and control of the State, ... the State must take full responsibility if a taking occurred." *Id.* at 644 (citations omitted).

Orion's assessment that the state/local relationship resembles that of principal and agent is equally applicable in this case. Here, the state guidelines governing the challenged portions of Whatcom County's master program are at least as prescriptive as those at issue in *Orion*, if not more so. The specific regulations challenged by the property owner in *Orion* (the designation of Padilla Bay in Skagit County's master program as "aquatic") were not mandated by the guidelines; rather, the guidelines⁸

⁷ In both 1994 and 2002, this Court again recognized the status of approved master programs as collectively constituting the state's shoreline regulations. See *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 203-04, 884 P.2d 910 (1994) ("The total of all approved shoreline management master programs constitute Washington State's Shoreline Management Master Program" that, once approved by Ecology, is adopted "as a state regulation."); *Samuel's Furniture*, 147 Wn.2d at 448 (once approved, master programs "constitute [the] use regulations for the various shorelines of the state" as part of the "state master program") (alteration original).

⁸ A copy of the guidelines governing the master program at issue in *Orion* are attached as Appendix A.

merely required “preferences” to uses favoring public and long-range goals and “suggested” that estuaries be left in their natural state. *Id.* at 643 (citing former WAC 173-16-040(5) and former WAC 173-16-050(5)).

By contrast, in this case, the guidelines mandate shoreline setbacks unless there are “demonstrated” and “compelling” reasons not to do so. *See* WAC 173-26-241(3)(j)⁹ (“[m]aster programs shall include policies and regulations that assure no net loss of shoreline ecological functions ... [s]uch provisions should include specific regulations for setbacks and buffer areas”); WAC 173-26-020(32) (defining “should” as meaning an action is required absent a demonstrated, compelling reason otherwise). While the guidelines do not specify exact setback widths, Ecology’s current guidelines require that master programs: (1) assure, at a minimum, “no net loss of ecological functions necessary to sustain shoreline natural resources” (WAC 173-26-201(2)(c)); (2) establish “adequate buffer zones around [critical saltwater habitats] to separate incompatible uses from the habitat areas” (WAC 173-26-221(2)(c)(iii)(B)); and (3) include regulatory provisions that “address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes” (WAC 173-26-221(5)(b)). This level of mandated protection

⁹ These provisions apply to all shoreline residential development. Additionally, industrial uses that are not specifically water dependent must also be set back from the shoreline and are only permissible “if the site is physically separated from the shoreline by another property or public right of way.” WAC 173-26-241(3)(f).

and the guideline's "no net loss" requirement make it highly unlikely that Ecology would have approved a master program proposal that lacked protections such as setbacks and building area limitations. There is also no question that, had Ecology deemed the County's proposed setbacks inadequate, Ecology could have mandated greater protections. *See* RCW 90.58.090(4).

CRSP's attempts to distinguish *Orion* and other cases by asserting that they were decided at a time when the SMA required Ecology to adopt master programs through formal rulemaking are unavailing. While it is true that, in 1995, the Legislature removed the requirement that Ecology approve master programs by formal rule and allowed administrative approval, CRSP presents no authority to suggest that, in altering the process for adopting shoreline regulations, the Legislature intended to modify in any substantive way the status of a master program approved by Ecology. Except for the convenience that Ecology "is no longer required to adopt these programs by rule," the 1995 amendments made no substantive changes to the master program process. *See* S.B. Rep. on Engrossed Substitute H.B. 1724, at 2, 54th Leg., Reg. Sess. (Wash. 1995); *see also* Laws of 1995, ch. 347, § 308.

In sum, *Orion's* principal/agent analogy is equally compelling in this case. If master programs are the product of state action such that the

state must stand alone in facing takings claims, then master programs are the product of state action for purposes of RCW 82.02.020.

2. *Biggers v. City of Bainbridge Island* Recognized That The State Maintains Ultimate Control Over Master Programs

More recently, this Court examined the state/local relationship under the SMA in the context of a city's moratorium on processing shoreline permit applications. *See Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 685, 169 P.3d 14 (2007). As the Court of Appeals recognized below, while this Court divided as to whether the moratoria were proper, "the court was unanimous in its agreement that the SMA continued to be properly viewed as a statutory scheme providing for coordinated authority between the state and local government, with the state reserving ultimate control unto itself." *Citizens*, 155 Wn. App. at 946.

For example, the lead opinion discussed the SMA's proclamation that shorelines are of "statewide significance" and highlighted the state's overriding power in master program development. *Biggers*, 162 Wn.2d at 694, 701 (J.M. Johnson, J., plurality opinion). The concurring and dissenting opinions, while recognizing that moratoria are consistent with local governments' delegated authority to administer¹⁰ approved master

¹⁰ Unlike the power delegated to local governments in *administering* permit applications, there is no question in this case that the SMA has reserved for the state the power to enact master programs.

programs, also recognized that local governments must yield to the state when so required by the SMA. *See id.* at 705-06 (Chambers, J., concurring opinion) (recognizing that the state has chosen to share shoreline regulation to the extent not in conflict with the SMA); *id.* at 709 (Fairhurst, J., dissenting opinion) (noting that the city's moratoria did not conflict with the SMA, was not an attempt to unilaterally amend its master program, and did not bypass that which the SMA reserves for approval by Ecology).

C. Applying RCW 82.02.020 To Master Programs Would Operate As A Significant Expansion Of Both The Statute And Its Construction By The Courts

As noted above, RCW 82.02.020 is concerned solely with local government action. Indeed, the language relied upon by CRSP was grafted onto the statute in response to the specific actions of some local governments that had begun placing per-parcel taxes on new development. Laws of 1982, 1st Ex. Sess., ch. 49, § 5; *see also* 1982 Final Legislative Report, 47th Leg., at 206 (Wash. 1982) (noting that “[s]ome contend that the imposition of fees by several cities and a few counties in the state on ... construction projects” necessitated “[r]estrictions on the imposition of development fees”).¹¹ Thus, the specific concern addressed by the statute

¹¹ A copy of pages 206-08 of the 1982 Final Legislative Report is attached as Appendix B.

(i.e., local governments imposing taxes on development without any check by the state) is absent in the case of master programs.

This conclusion is wholly consistent with prior judicial constructions of RCW 82.02.020, which have dealt exclusively with regulations adopted solely by the local governments involved. In *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002), this Court held that RCW 82.02.020 precluded Camas from enforcing an ordinance requiring open space for new development. *Id.* at 745. Unlike this case, the open space requirement was not mandated by state law. *See id.* at 746-47. No state approval was required for the city's open space ordinance to take effect, nor was the city's ordinance incorporated into any state "open space plan" that would be analogous to the state master program. The purely local character of the challenged ordinance stands in sharp contrast to master programs that: (1) must be adopted to comply with specific requirements in the SMA and shoreline guidelines; (2) must be approved by Ecology before they can take effect; (3) may be rewritten or supplanted by Ecology; and (4) are explicitly incorporated into a state shoreline master program.

Pursuant to RCW 82.02.020 and applying *Isla Verde*, Division I of the Court of Appeals struck down a King County ordinance (adopted pursuant to the GMA) that restricted clearing in rural areas.

Citizens' Alliance For Property Rights v. Sims, 145 Wn. App. 649, 653, 187 P.3d 786 (2008) (*CAPR*), review denied, 165 Wn.2d 1030, 203 P.3d 378 (2009). As in *Isla Verde*, the *CAPR* case did not involve regulations subject to mandatory state review and revision and expressly requiring state approval before taking effect, nor regulations that, by law, become a part of the state's regulatory scheme upon adoption. See *id.* at 653–54. As stated by the Court of Appeals in this case: “[*CAPR*] is inapplicable to the circumstances herein, given that the legislature created considerably different structures within the GMA and the SMA.” *Citizens*, 155 Wn. App. at 949.

Neither *Isla Verde* nor *CAPR* speak to the question at hand. Furthermore, CRSP's argument that state-approved master programs are subject to RCW 82.02.020 would considerably expand the scope of the statute in contravention to its plain language and purpose, as interpreted by the courts. This Court should reject the argument.

D. CRSP's Attempts To Discount State's Role In Shoreline Regulation Are Unavailing¹²

In the courts below, CRSP advanced numerous theories in an attempt to downplay the state's role in master program development. CRSP's arguments are unconvincing.

¹² What follows is a summary of the State's arguments against CRSP's various theories in the lower courts. A full discussion of CRSP's arguments can be found in the State's response brief before the Court of Appeals at pp. 19-28.

First, CRSP is incorrect in its claim that 1995 amendments¹³ to the GMA and SMA placed master programs within RCW 82.02.020's reach. These amendments did nothing to alter the state's role in master program adoption and enforcement and did not significantly modify the SMA in any respect. *See* Laws of 1995, ch. 347. Indeed, as noted by the lead opinion in *Biggers*, the 1995 amendments "simply provide that the goals and policies of a city's shoreline master program shall be considered a part of that city's GMA comprehensive plan." *Biggers*, 162 Wn.2d at 700-01. The lead opinion went on to explain that "[t]he GMA does not displace the SMA as the framework for statewide shoreline regulation. Rather, the legislature carefully and explicitly preserved the integrity of the SMA's [master program] adoption and approval procedures." *Id.* at 700. Thus, CRSP's expansive reading is supported by neither the language of the amendments nor the legislative history.

As for CRSP's argument that WAC 173-26-186(5) "expressly incorporates" RCW 82.02.020, it is premised on an incorrect and overly broad reading of the regulation's purpose. The regulation in question is

¹³ The 1995 amendments in question were part of a legislative effort designed to implement certain recommendations of then-Governor Lowry's Task Force on Regulatory Reform. *See* S.B. Rep. on Engrossed Substitute H.B. 1724, at 1, 54th Leg., Reg. Sess. (Wash. 1995). The amendments made the goals and policies of the SMA the fourteenth planning goal under the GMA to ensure consistency between planning under the statutes and to reinforce that the SMA governs land use within the shoreline jurisdiction. *See* Laws of 1995, ch. 347, § 104(1) (*codified as* RCW 36.70A.480(1)).

part of the “governing principles” of the master program guidelines and is intended to “articulate a set of foundational concepts” to guide master program development and provide direction to Ecology in reviewing and approving master programs.¹⁴ WAC 173-26-186. The regulation does not operate as a definitive statement that specific laws apply.

Nor could it. It is beyond question that Ecology cannot substantively modify or otherwise override the plain wording of either the SMA or RCW 82.02.020 in an administrative rule. *See Fahn v. Cowlitz Cy.*, 93 Wn.2d 368, 383, 610 P.2d 857 (1980). Whether RCW 82.02.020 applies to state-approved master programs is determined by the statute itself, as interpreted by the courts, not by an administrative rule adopted by a state agency.

CRSP’s assertion that the shoreline setbacks—in isolation—should be subject to RCW 82.02.020 because they mirror the critical areas buffers from the County’s Critical Areas Ordinance also fails. Regardless of the shoreline setbacks’ origin, they were mere proposals once included as part of the County’s master program. They still had to go through the entire review and adoption procedure, outlined above, whereby the state took a hard look at *all* provisions and took the affirmative step of enacting and

¹⁴ The reference to Chapter 82.02 RCW makes sense in the context of where it is found. As a “foundational concept,” Ecology agrees that master programs should not place unreasonable conditions on development.

adopting such provisions as its own. Furthermore, CRSP's position would lead to the absurd and confusing result that some portions of the master program would be subject to RCW 82.02.020 and others would not.

Finally, CRSP's argument that the State's position somehow serves to shield critical areas regulations from RCW 82.02.020 is likewise without merit. The State has never asserted in this litigation that a local government's enactment of a critical areas ordinance is not subject to challenge under RCW 82.02.020. Indeed, the issue never came up because this case does not involve a challenge to a critical areas ordinance. CRSP did not challenge the County's critical areas ordinance; it challenged the shoreline master program. The master program is the product of state action and not subject to RCW 82.02.020.

IV. CONCLUSION

For the reasons stated above, the State of Washington, Department of Ecology, requests that the Court of Appeals' decision be affirmed.

RESPECTFULLY SUBMITTED this 31st day of January 2011.

ROBERT M. MCKENNA

Attorney General



KELLY T. WOOD, WSBA #40067

KATHARINE G. SHIREY, WSBA #35736

Assistant Attorneys General

Attorneys for Respondent

State of Washington, Dep't of Ecology

APPENDIX A

Chapter 173-16 WAC

SHORELINE MANAGEMENT ACT GUIDELINES
FOR DEVELOPMENT OF MASTER PROGRAMS

Last Update: 4/24/91

WAC

173-16-010	Purpose.
173-16-020	Applicability.
173-16-030	Definitions.
173-16-040	The master program.
173-16-050	Natural systems.
173-16-060	The use activities.
173-16-064	Ocean management.
173-16-070	Variances and conditional uses.
173-16-200	Appendix.

WAC 173-16-010 Purpose. This regulation is adopted pursuant to chapter 90.58 RCW, in order to: (1) Serve as standards for implementation of the policy of chapter 90.58 RCW for regulations of uses of the shorelines; and

(2) Provide criteria to local governments and the department of ecology in developing master programs.

[Order DE 72-12, § 173-16-010, filed 6/20/72 and 7/20/72.]

WAC 173-16-020 Applicability. The provisions of this chapter shall apply state-wide to all shorelines and shorelines of state-wide significance as defined in chapter 90.58 RCW and WAC 173-16-030.

[Order DE 72-12, § 173-16-020, filed 6/20/72 and 7/20/72.]

WAC 173-16-030 Definitions. As used herein, the following words and phrases shall have the following meanings:

(1) "Act" means Shoreline Management Act of 1971, chapter 90.58 RCW.

(2) "Department" means state of Washington, department of ecology.

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

(4) "Director" means the director of the department of ecology.

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

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

(7) "Hearings board" means the shorelines hearings board

established by the act.

(8) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to the Shoreline Act of 1971.

(9) "Master program" means the comprehensive use plan for a described area, and the use regulations, together with maps, diagrams, charts or other descriptive material and text, a statement of desired goals and standards developed in accordance with the policies enunciated in section 2 of the act.

(10) "Ordinary high-water mark" means the mark on all lakes, streams, and tidal waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: *Provided*, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high water.

(11) "Permit" means that required by the act for substantial development on shorelines, to be issued by the local government entity having administrative jurisdiction and subject to review by the department of ecology and the attorney general.

(12) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them, except:

(a) Shorelines of state-wide significance;

(b) Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less, and the wetlands associated with such upstream segments; and

(c) Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

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

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

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

(i) Nisqually Delta - from DeWolf Bight to Tatsolo Point;

(ii) Birch Bay - from Point Whitehorn to Birch Point;

(iii) Hood Canal - from Tala Point to Foulweather Bluff;

(iv) Skagit Bay and adjacent area - from Brown Point to Yokeko Point; and

(v) Padilla Bay - from March Point to William Point.

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

(d) Those lakes, whether natural, artificial or a combination thereof, with a surface acreage of 1,000 acres, or more, measured at the ordinary high-water mark;

(e) Those natural rivers or segments thereof, as follows:

(i) Any west of the crest of the Cascade Range downstream of

a point where the mean annual flow is measured at 1,000 cubic feet per second, or more;

(ii) Any east of the crest of the Cascade Range downstream of a point where the annual flow is measured at 200 cubic feet per second, or more, or those portions of rivers east of the crest of the Cascade Range downstream from the first 300 square miles of drainage area, whichever is longer;

(f) Those wetlands associated with (a), (b), (d), and (e) of this subsection.

(14) "Shorelines of the state" means the total of all "shorelines" and "shorelines of state-wide significance" within the state.

(15) "State master program" means the cumulative total of all master programs approved or adopted by the department of ecology.

(16) "Substantial development" means any development of which the total cost, or fair market value, exceeds \$1,000, or any development which materially interferes with normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments:

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

(b) Construction of the normal protective bulkhead, common to single-family residences;

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

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

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

(f) Construction on wetlands by an owner, lessee, or contract purchaser, of a single-family residence, for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof.

(17) "Wetlands" or "wetland areas" means those lands extending landward for 200 feet in all directions, as measured on a horizontal plane from the ordinary high-water mark and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated with the streams, lakes and tidal waters which are subject to the provisions of the act.

[Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. 85-09-043 (Order DE 85-05), § 173-16-030, filed 4/15/85; Order DE 72-12, § 173-16-030, filed 6/20/72 and 7/20/72.]

WAC 173-16-040 The master program. The master program is to be developed by local government to provide an objective guide for regulating the use of shorelines. The master program should clearly state local policies for the development of shorelands and indicate how these policies relate to the goals of the local citizens and to specific regulations of uses affecting the physical development of land and water resources throughout the local governments' jurisdiction.

The master program developed by each local government will reflect the unique shoreline conditions and the development requirements which exist and are projected in that area. As part of the process of master program development, local governments can

identify problems and seek solutions which best satisfy their needs.

A master program, by its definition, is general, comprehensive and long-range in order to be applicable to the whole area for a reasonable length of time under changing conditions.

"General" means that the policies, proposals and guidelines are not directed towards any specific sites.

"Comprehensive" means that the program is directed towards all land and water uses, their impact on the environment and logical estimates of future growth. It also means that the program shall recognize plans and programs of the other government units, adjacent jurisdictions and private developers.

"Long-range" means that the program is to be directed at least 20-to-30 years into the future, look beyond immediate issues, and follow creative objectives rather than a simple projection of current trends and conditions.

Finally, chapter 90.58 RCW requires that the master program shall constitute use regulations for the various shorelines of the state. Specific guidelines are outlined in RCW 90.58.100(1) for preparing the master programs to accomplish this purpose. It is the intention of these guidelines, especially those related to citizen involvement, and the inventory to aid in carrying out this section of the act.

To facilitate an effective implementation of chapter 90.58 RCW throughout the state, the procedures on the following pages shall be observed while developing master programs for the shorelines. Exceptions to some of the specific provisions of these guidelines may occur where unique circumstances justify such departure. Any departure from these guidelines must, however, be compatible with the intent of the Shoreline Management Act as enunciated in RCW 90.58.020. Further, in all cases, local governments must meet the master program requirements specified in the Shoreline Management Act of 1971.

The following provisions set forth guidelines as to citizen involvement. (1) Citizen involvement. While public involvement and notification is required of the master program at the time of adoption by the act, the general public must be involved in the initial planning stage during formulation of the master plan.

The act requires that prior to approval or adoption of a master program, or a portion thereof, by the department, at least one public hearing shall be held in each county affected by the program for the purpose of obtaining the views and comments of the public.

The act charges the state and local government with not only the responsibility of making reasonable efforts to inform the people of the state about the shoreline management program, but also actively encourages participation by all persons, private groups, and entities, which have an interest in shoreline management.

To meet these responsibilities, the local government agencies responsible for the development of the master program should establish a method for obtaining and utilizing citizen involvement. The extent of citizen involvement in the formulation of the master program will be considered by the department in the review of the program. A failure by the local government to encourage and utilize citizen involvement, or to justify not having done so, may be noted as a failure to comply with the act.

Though the department recognizes various forms of citizen

involvement as viable approaches for involving the public in the master program, the local government will be encouraged to utilize the method as suggested in these guidelines. If a local government does not followed these guidelines, it should provide an explanation of the method used. The department will be available to explain and help organize the suggested approach to citizen involvement upon request.

The suggested approach to citizen involvement to be utilized by the local government agency responsible for the development of the master program includes the following:

(a) Appoint a citizen advisory committee whose function will be to guide the formulation of the master program through a series of public evening meetings and at least one public hearing. The committee members should represent both commercial interests as well as environmentalists. However, the advisory committee itself is not to be a substitute for general citizen involvement and input. The aim of the committee will be to utilize citizen input in:

- (i) Studying existing public policies related to shorelines.
- (ii) Defining the needs to satisfy local demands for shorelines.
- (iii) Studying the type and condition of local shorelines relative to needs.
- (iv) Developing goals and policies for the master program with the local government fulfilling the specifications of the master program, including designation of the environments.
- (v) Identifying use conflicts.
- (vi) Proposing alternatives for the use of shorelines.
- (vii) Examining the effects of the master program on the environment.

(b) The citizen advisory committee should hold at least three public meetings during development of the master program and designation of the environments according to the following guidelines:

- (i) Public notice (as stated in subsection 1 below) must be provided seven days prior to the evening meeting.
 - (ii) All meetings must be open to the public for free discussion.
 - (iii) Meetings should be held in the evening at a location accessible to the general public.
 - (iv) Record of all meetings should be filed with the local government and made available to the public.
 - (v) Local government should provide resource persons to assist in the preparation, organization and diffusion of information.
 - (vi) The final evening meeting should be held at least seven days prior to the public hearing.

(c) A newsletter should be published by the advisory committee in cooperation with the local government.

- (i) The information sheet should be available to the public at posted locations.
 - (ii) It should be available after the first evening public meeting and prior to the second.
 - (iii) The date, time, and location of future meetings and hearings should be stated.
 - (iv) A phone number should be provided to obtain further information.

(v) Public notice should be made of the availability of the newsletter as stated in subsection (d) below.

(d) Publicity of the master program should utilize:

(i) Public notice postings as per subsection (i) below.

(ii) Newsletter.

(iii) Radio, T.V. and local news media.

(iv) A local paper of general circulation.

(v) Announcements to community groups.

(e) At least one public hearing should be held by the local government after the three public meetings have been held to discuss the proposed master plan.

(i) Public notice (as stated in subsection (i) below) must be made a minimum of once in each of three weeks immediately preceding the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held.

(ii) The master program should be available for public inspection at the local government office and available upon request at least seven days prior to the public hearing.

(f) Prior to adoption of the master program, all reasonable attempts should have been made to obtain a general concurrence of the public and the advisory committee. The method of obtaining or measuring concurrence must be established by the local government and must provide a clear indication of how citizen input is utilized.

(g) If the level of concurrence on the master program is not considered adequate by the advisory committee at the conclusion of the public hearing, the local government should hold subsequent public meetings and public hearings until such time as adequate concurrence as per subsection (f) above is reached.

(h) Attached to the master program upon its submission to the department of ecology shall be a record of public meetings and citizen involvement. A discussion of the use of citizen involvement and measurement on concurrence should be included.

(i) Public notice shall include:

(i) Reference to the authority under which the rule is proposed.

(ii) A statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(iii) The time, place and manner in which interested persons may present their views thereon (as stated in RCW 30.04.025 [34.04.025]).

(2) Policy statements. Each local government shall submit policy statements, developed through the citizen involvement process, regarding shoreline development as part of its master program. Because goal statements are often too general to be useful to very specific decision problems, the policy statements are to provide a bridge for formulating and relating use regulations to the goals also developed through the citizen involvement process. In summary, the policy statements must reflect the intent of the act, the goals of the local citizens, and specifically relate the shoreline management goals to the master program use regulations.

Clearly stated policies are essential to the viability of the master programs. The policy statements will not only support the environmental designations explained below, but, also being more specific than goal statements, will provide an indication of needed environmental designations and use regulations.

The following methodology for developing policy statements is recommended:

(a) Obtain a broad citizen input in developing policy by

involving interested citizens and all private and public entities having interest or responsibilities relating to shorelines. Form a citizen advisory committee and conduct public meetings as outlined in WAC 173-16-040(1) to encourage citizens to become involved in developing a master program.

(b) Analyze existing policies to identify those policies that may be incorporated into the master program and those which conflict with the intent of the act. Further, identify constraints to local planning and policy implementation which are a result of previous government actions, existing land-use patterns, actions of adjacent jurisdictions or other factors not subject to local control or influence.

(c) Formulate goals for the use of shoreline areas and develop policies to guide shoreland activities to achieve these goals.

The policies should be consistent with RCW 90.58.020 and provide guidance and support to local government actions regarding shoreline management. Additionally, the policies should express the desires of local citizens and be based on principles of resource management which reflect the state-wide public interest in all shorelines of state-wide significance.

(3) Master program elements. Consistent with the general nature of master programs, the following land and water use elements are to be dealt with, when appropriate, in the local master programs. By dealing with shoreline uses, systematically as belonging to these generic classes of activities, the policies and goals in the master programs can be clearly applied to different shoreline uses. In the absence of this kind of specificity in the master programs, the application of policy and use regulations could be inconsistent and arbitrary.

The plan elements are:

(a) Economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commercial and other developments that are particularly dependent on shoreland locations.

(b) Public access element for assessing the need for providing public access to shoreline areas.

(c) Circulation element for assessing the location and extent of existing and proposed major thoroughfares, transportation routes, terminals and other public facilities and correlating those facilities with the shoreline use elements.

(d) Recreational element for the preservation and expansion of recreational opportunities through programs of acquisition, development, and various means of less-than-fee acquisition.

(d) Shoreline use element for considering:

(i) The pattern of distribution and location requirements of land uses on shorelines and adjacent areas, including, but not limited to, housing, commerce, industry, transportation, public buildings and utilities, agriculture, education and natural resources.

(ii) The pattern of distribution and location requirements of water uses including, but not limited to, aquaculture, recreation and transportation.

(f) Conservation element for the preservation of the natural shoreline resources, considering such characteristics as scenic vistas, parkways, estuarine areas for fish and wildlife protection, beaches and other valuable natural or aesthetic features.

(g) Historical/cultural element for protection and restoration of buildings, sites and areas having historic cultural, educational

or scientific values.

(h) In addition to the above-described elements, local governments are encouraged to include in their master programs, an element concerned with the restoration of areas to a natural useful condition which are blighted by abandoned and dilapidated structures. Local governments are also encouraged to include in their master programs any other elements, which, because of present uses or future needs, are deemed appropriate and necessary to effectuate the Shoreline Management Act.

(4) Environments. In order to plan and effectively manage shoreline resources, a system of categorizing shoreline areas is required for use by local governments in the preparation of master programs. The system is designed to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. To accomplish this, the environmental designation to be given any specific area is to be based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development and the goals and aspirations of local citizenry.

The recommended system classifies shorelines into four distinct environments (natural, conservancy, rural and urban) which provide the framework for implementing shoreline policies and regulatory measures.

This system is designed to encourage uses in each environment which enhance the character of that environment. At the same time, local government may place reasonable standards and restrictions on development so that such development does not disrupt or destroy the character of the environment.

The basic intent of this system is to utilize performance standards which regulate use activities in accordance with goals and objectives defined locally rather than to exclude any use from any one environment. Thus, the particular uses or type of developments placed in each environment must be designed and located so that there are no effects detrimental to achieving the objectives of the environment designations and local development criteria.

This approach provides an "umbrella" environment class over local planning and zoning on the shorelines. Since every area is endowed with different resources, has different intensity of development and attaches different social values to these physical and economic characteristics, the environment designations should not be regarded as a substitute for local planning and land-use regulations.

(a) The basic concept for using the system is for local governments to designate their shorelines into environment categories that reflect the natural character of the shoreline areas and the goals for use of characteristically different shorelines. The determination as to which designation should be given any specific area should be made in the following manner:

(i) The resources of the shoreline areas should be analyzed for their opportunities and limitations for different uses. Completion of the comprehensive inventory of resources is a requisite to identifying resource attributes which determine these opportunities and limitations.

(ii) Each of the plan elements should be analyzed for their effect on the various resources throughout shoreline areas. Since shorelines are only a part of the system of resources within local jurisdiction, it is particularly important that planning for

shorelines be considered an integral part of area-wide planning. Further, plans, policies and regulations for lands adjacent to the shorelines of the state should be reviewed in accordance with RCW 90.58.340.

(iii) Public desires should be considered through the citizen involvement process to determine which environment designations reflect local values and aspirations for the development of different shoreline areas.

(b) The management objectives and features which characterize each of the environments are given below to provide a basis for environment designation within local jurisdictions.

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

The main emphasis of regulation in these areas should be on natural systems and resources which require severe restrictions of intensities and types of uses to maintain them in a natural state. Therefore, activities which may degrade the actual or potential value of this environment should be strictly regulated. Any activity which would bring about a change in the existing situation would be desirable only if such a change would contribute to the preservation of the existing character.

The primary determinant for designating an area as a natural environment is the actual presence of some unique natural or cultural features considered valuable in their natural or original condition which are relatively intolerant of intensive human use. Such features should be defined, identified and quantified in the shoreline inventory. The relative value of the resources is to be based on local citizen opinion and the needs and desires of other people in the rest of the state.

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

The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are nonconsumptive of the physical and biological resources of the area. Nonconsumptive uses are those uses which can utilize resources on a sustained yield basis while minimally reducing opportunities for other future uses of the resources in the area. Activities and uses of a nonpermanent nature which do not substantially degrade the existing character of an area are appropriate uses for a conservancy environment. Examples of uses that might be predominant in a conservancy environment include diffuse outdoor recreation activities, timber harvesting on a sustained yield basis, passive agricultural uses such as pasture and range lands, and other related uses and activities.

The designation of conservancy environments should seek to satisfy the needs of the community as to the present and future location of recreational areas proximate to concentrations of population, either existing or projected. For example, a conservancy environment designation can be used to complement city, county or state plans to legally acquire public access to the water.

The conservancy environment would also be the most suitable designation for those areas which present too severe biophysical limitations to be designated as rural or urban environments. Such limitations would include areas of steep slopes presenting erosion and slide hazards, areas prone to flooding, and areas which cannot provide adequate water supply or sewage disposal.

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

The rural environment is intended for those areas characterized by intensive agricultural and recreational uses and those areas having a high capability to support active agricultural practices and intensive recreational development. Hence, those areas that are already used for agricultural purposes, or which have agricultural potential should be maintained for present and future agricultural needs. Designation of rural environments should also seek to alleviate pressures of urban expansion on prime farming areas.

New developments in a rural environment are to reflect the character of the surrounding area by limiting residential density, providing permanent open space and by maintaining adequate building setbacks from water to prevent shoreline resources from being destroyed for other rural types of uses.

Public recreation facilities for public use which can be located and designed to minimize conflicts with agricultural activities are recommended for the rural environment. Linear water access which will prevent overcrowding in any one area, trail systems for safe nonmotorized traffic along scenic corridors and provisions for recreational viewing of water areas illustrate some of the ways to ensure maximum enjoyment of recreational opportunities along shorelines without conflicting with agricultural uses. In a similar fashion, agricultural activities should be conducted in a manner which will enhance the opportunities for shoreline recreation. Farm management practices which prevent erosion and subsequent siltation of water bodies and minimize the flow of waste material into water courses are to be encouraged by the master program for rural environments.

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

The urban environment is an area of high-intensity land-use including residential, commercial, and industrial development. The environment does not necessarily include all shorelines within an incorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use pressure, as well as areas planned to accommodate urban expansion. Shorelines planned for future urban expansion should present few biophysical limitations for urban activities and not have a high priority for designation as an alternative environment.

Because shorelines suitable for urban uses are a limited resource, emphasis should be given to development within already developed areas and particularly to water-dependent industrial and commercial uses requiring frontage on navigable waters.

In the master program, priority is also to be given to

planning for public visual and physical access to water in the urban environment. Identifying needs and planning for the acquisition of urban land for permanent public access to the water in the urban environment should be accomplished in the master program. To enhance waterfront and ensure maximum public use, industrial and commercial facilities should be designed to permit pedestrian waterfront activities. Where practicable, various access points ought to be linked to nonmotorized transportation routes, such as bicycle and hiking paths.

(5) Shorelines of state-wide significance. The act designated certain shorelines as shorelines of state-wide significance. Shorelines thus designated are important to the entire state. Because these shorelines are major resources from which all people in the state derive benefit, the guidelines and master programs must give preference to uses which favor public and long-range goals.

Accordingly, the act established that local master programs shall give preference to uses which meet the principles outlined below in order of preference. Guidelines for ensuring that these principles are incorporated into the master programs and adhered to in implementing the act follow each principle.

(a) Recognize and protect the state-wide interest over local interest. Development guidelines:

(i) Solicit comments and opinions from groups and individuals representing state-wide interests by circulating proposed master programs for review and comment by state agencies, adjacent jurisdictions' citizen advisory committees, and state-wide interest groups. (See Appendix, Reference No. 32.)

(ii) Recognize and take into account state agencies' policies, programs and recommendations in developing use regulations. Reference to many of these agencies' policies are provided in the appendix. This information can also be obtained by contacting agencies listed in the *Shoreline Inventory Supplement Number One*.

(iii) Solicit comments, opinions and advice from individuals with expertise in ecology, oceanography, geology, limnology, aquaculture and other scientific fields pertinent to shoreline management. Names of organizations and individuals which can provide expert advice can be obtained from the department's resource specialist listing.

(b) Preserve the natural character of the shoreline. Development guidelines:

(i) Designate environments and use regulations to minimize man-made intrusions on shorelines.

(ii) Where intensive development already occurs, upgrade and redevelop those areas to reduce their adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.

(iii) Ensure that where commercial timber-cutting is allowed as provided in RCW 90.58.150, reforestation will be possible and accomplished as soon as practicable.

(c) Result in long-term over short-term benefit. Development guidelines:

(i) Prepare master programs on the basis of preserving the shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions characteristic of shorelines of state-wide significance, should be severely limited.

(ii) Evaluate the short-term-economic gain or convenience of developments in relationship to long-term and potentially costly impairments to the natural environment.

(iii) Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or for the general enhancement of shoreline areas.

(d) Protect the resources and ecology of shorelines.
Development guidelines:

(i) Leave undeveloped those areas which contain a unique or fragile natural resource.

(ii) Prevent erosion and sedimentation that would alter the natural function of the water system. In areas where erosion and sediment control practices will not be effective, excavations or other activities which increase erosion are to be severely limited.

(iii) Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human uses.

(e) Increase public access to publicly owned areas of the shorelines. Development guidelines:

(i) In master programs, give priority to developing paths and trails to shoreline areas, linear access along the shorelines, and to developing upland parking.

(ii) Locate development inland from the ordinary high-water mark so that access is enhanced.

(f) Increase recreational opportunities for the public on the shorelines. Development guidelines:

(i) Plan for and encourage development of facilities for recreational use of the shorelines.

(ii) Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for nonmotorized access to the shorelines.

[Order DE 72-12, § 173-16-040, filed 6/20/72 and 7/20/72.]

WAC 173-16-050 Natural systems. This section contains brief and general descriptions of the natural geographic systems around which the shoreline management program is designed. The intent of this section is to define those natural systems to which the Shoreline Management Act applies, to highlight some of the features of those systems which are susceptible to damage from human activity, and to provide a basis for the guidelines pertaining to human-use activities contained in WAC 173-16-060.

It is intended that this section will provide criteria to local governments in the development of their master programs, as required in RCW 90.58.030(a).

(1) Marine beaches. Beaches are relatively level land areas which are contiguous with the sea and are directly affected by the sea even to the point of origination. The most common types of beaches in Washington marine waters are:

(a) Sandy beaches. Waves, wind, tide and geological material are the principal factors involved in the formation of beaches. The beach material can usually be traced to one of four possible sources: The cliffs behind the beach; from the land via rivers; offshore wind; and finally from longshore drifting of material. Longshore-drifting material must have been derived initially from the first three sources. Most beach material in Puget Sound is eroded from the adjacent bluffs composed of glacial till.

The effect of wave action on the movement and deposition of

beach material varies depending upon the size of the material. Hence, in most cases, beaches composed of different sized material are usually characterized by different slopes and profiles. The entire process of beach formation is a dynamic process resulting from the effect of wave action on material transport and deposition. Initially, wave action will establish currents which transport and deposit material in various patterns. However, once a particular beach form and profile is established it begins to modify the effects of waves thus altering the initial patterns of material transport and deposition. Hence, in building beach structures such as groins, bulkheads or jetties, it is particularly important to recognize that subsequent changes in wave and current patterns will result in a series of changes in beach formation over time. (See WAC 173-16-060 (6), (11), (12) and (13).)

In the process of beach formation, sand particles are transported up the beach by breaking waves that wash onto the beach in a diagonal direction and retreat in a vertical direction. At the same time, longshore currents are created in the submerged intertidal area by the force of diagonally approaching waves. Beach material suspended by the force of the breaking waves is transported in one direction or another by the longshore current. Longshore drifting of material often results in the net transportation of beach material in one direction causing the loss of material in some areas and gains in others.

The profile of a beach at any time will be determined by the wave conditions during the preceding period. Severe storms will erode or scour much material away from the beaches due to the force of retreating waves. During calm weather, however, the waves will constructively move material back onto the beach. This destructive and constructive action, called cut and fill, is evidenced by the presence of beach ridges or berms. New ridges are built up in front of those that survive storm conditions as sand is supplied to the beach in succeeding phases of calmer weather. In time, the more stable landward ridges are colonized by successional stages of vegetation. The vegetation stabilizes the ridges, protects them from erosion and promotes the development of soil.

(b) Rocky beaches. Rocky beaches, composed of cobbles, boulders and/or exposed bedrock are usually steeper and more stable than sandy shores. Coarse material is very permeable which allows attacking waves to sink into the beach causing the backwash to be reduced correspondingly. On sandy shores a strong backwash distributes sand more evenly, thus creating a flatter slope.

On rocky shores a zonal pattern in the distribution of plants and animals is more evident than on muddy or sandy shores. The upper beach zone is frequently very dry, limiting inhabitants to species which can tolerate a dry environment. The intertidal zone is a narrow area between mean low tide and mean high tide that experiences uninterrupted covering and uncovering by tidal action. One of the major characteristics of this zone is the occurrence of tidal pools which harbor separate communities which can be considered subzones within the intertidal zone. The subtidal zone is characterized by less stressful tidal influences but is subject to the forces of waves and currents which affect the distribution and kinds of organisms in this zone.

(c) Muddy shores. Muddy shores occur where the energy of coastal currents and wave action is minimal, allowing fine particles of silt to settle to the bottom. The result is an accumulation of mud on the shores of protected bays and mouths of

coastal streams and rivers. Most muddy beaches occur in estuarine areas. However, some muddy shore areas may be found in coastal inlets and embayments where salinity is about the same as the adjacent sea.

Few plants have adapted to living on muddy shores. Their growth is restricted by turbidity which reduces light penetration into the water and thereby inhibits photosynthesis. In addition, the lack of solid structures to which algae may attach itself and siltation which smothers plants effectively prevents much plant colonization of muddy shores. While the lack of oxygen in mud makes life for fauna in muddy shores difficult, the abundance of food as organic detritus provides nutrition for a large number of detritus feeders.

(2) Spits and bars. Spits and bars are natural formations composed of sand and gravel and shaped by wind and water currents and littoral drifting. Generally a spit is formed from a headland beach (tall cliff with a curved beach at the foot) and extends out into the water (hooks are simply hookshaped spits). While spits usually have one end free in open water, bars generally are attached to land at both ends. These natural forms enclose an area which is protected from wave action, allowing life forms such as shellfish, to reproduce and live protected from the violence of the open coast. (See WAC 173-16-060(16).)

(3) Dunes. Dunes are mounds or hills of sand which have been heaped up by wind action. Typically, dunes exhibit four distinct features:

(a) Primary dunes. The first system of dunes shoreward of the water, having little or no vegetation, which are intolerant of unnatural disturbances.

(b) Secondary dunes. The second system of dunes shoreward from the water, with some vegetative cover.

(c) Back dunes. The system of dunes behind the secondary dunes, generally having vegetation and some top soil, and being more tolerant of development than the primary and secondary systems.

(d) Troughs. The valleys between the dune systems.

Dunes are a natural levee and a final protection line against the sea. The destructive leveling of, or interference with the primary dune system (such as cutting through the dunes for access) can endanger upland areas by subjecting them to flooding from heavy wave action during severe storms and destroy a distinct and disappearing natural feature. Removal of sand from the beach and shore in dune areas starves dunes of their natural supply of sand and may cause their destruction from lack of sand. (See WAC 173-16-060(16).) Appropriate vegetation can and should be encouraged throughout the entire system for stabilization. (See WAC 173-16-060(21).)

(4) Islands. An island, broadly defined, is a land mass surrounded by water. Islands are particularly important to the state of Washington since two entire counties are made up of islands and parts of several other counties are islands. A fairly small island, such as those in our Puget Sound and north coast area, is an intriguing ecosystem, in that no problem or area of study can be isolated. Every living and nonliving thing is an integral part of the functioning system. Each island, along with the mystique afforded it by man, is a world of its own, with a biological chain, fragile and delicately balanced. Obviously it does not take as much to upset this balance as it would the

mainland system. Because of this, projects should be planned with a more critical eye toward preserving the very qualities which make island environments viable systems as well as aesthetically captivating to humans.

(5) Estuaries. An estuary is that portion of a coastal stream influenced by the tide of the marine waters into which it flows and within which the sea water is measurably diluted with freshwater derived from land drainage.

Estuaries are zones of ecological transition between fresh and saltwater. The coastal brackish water areas are rich in aquatic life, some species of which are important food organisms for anadromous fish species which use these areas for feeding, rearing and migration. An estuarine area left untouched by man is rare since historically they have been the sites for major cities and port developments. Because of their importance in the food production chain and their natural beauty, the limited estuarial areas require careful attention in the planning function. Close scrutiny should be given to all plans for development in estuaries which reduce the area of the estuary and interfere with water flow.

(See WAC 173-16-060(14).) Special attention should be given to plans for upstream projects which could deplete the freshwater supply of the estuary.

(6) Marshes, bogs, swamps. Marshes, bogs and swamps are areas which have a water table very close to the surface of the ground. They are areas which were formerly shallow water areas that gradually filled through nature's processes of sedimentation (often accelerated by man's activities) and the decay of shallow water vegetation.

Although considered abysmal wastelands by many, these wet areas are extremely important to the food chain. Many species of both animal and plant life depend on this wet environment for existence. Birds and waterfowl choose these locations for nesting places. Wet areas are important as ground water recharge areas and have tremendous flood control value.

The high-water table and poor foundation support provided by the organic soils in these areas usually prevent development on them. The extraction of peat from bogs is possible when it is accomplished in such a manner that the surrounding vegetation and wildlife is left undisturbed and the access roads and shorelines are returned to a natural state upon completion of the operation.

The potential of marshes, bogs and swamps to provide permanent open space in urbanizing regions is high because of the costs involved in making these areas suitable for use. Unlimited public access into them, however, may cause damage to the fragile plant and animal life residing there.

(7) Lakes. A lake can be defined broadly as a body of standing water located inland. Lakes originate in several ways. Many lakes are created each year by man, either by digging a lake basin or by damming a natural valley. Natural lakes can be formed in several ways: By glaciers gouging basins and melting and depositing materials in such a way as to form natural dams; by landslides which close off open ends of valleys; extinct craters which fill with water; changes in the earth's crust, as can happen during earthquakes, forming basins which fill with water; or by changes in a river or stream course which isolate parts of the old course forming lakes, called oxbow lakes.

A lake, like its inhabitants, has a life span. This lifetime may be thousands of years for a large lake or just a few years for

a pond. This process of a lake aging is known generally as eutrophication. It is a natural process which is usually accelerated by man's activities. Human sewage, industrial waste, and the drainage from agricultural lands increases the nutrients in a lake which in turn increases the growth of algae and other plants. As plants die, the chemical process of decomposition depletes the water's supply of oxygen necessary for fish and other animal life. These life forms then disappear from the lake, and the lake becomes a marsh or swamp.

Shallow lakes are extremely susceptible to increases in the rate of eutrophication resulting from discharges of waste and nutrient-laden runoff waters. Temperature stratification does not normally occur in shallow lakes. Efficient bottom-to-surface circulation of water in these shallow lakes moves nutrients to the surface photosynthetic zone encouraging increased biotic productivity. Large quantities of organic matter are produced under these conditions. Upon decomposition, heavy demands are made on the dissolved oxygen content of shallow lakes. Eventually, the oxygen level drops and some fish and other life forms die.

The entire ecosystem of a lake can be altered by man. By removing the surrounding forest for lumber or to provide a building site or farm land, erosion into the lake is accelerated. Fertilizers, whether agricultural or those used by homeowners, can enter the lake either from runoff or leaching along with other chemicals that interfere with the intricate balance of living organisms. The construction of bulkheads to control erosion and filling behind them to enlarge individual properties can rob small fish and amphibians of their habitats. The indiscriminate construction of piers, docks and boathouses, can deprive all of the waterfront owners and the general public of a serene natural view and reduce the lake's surface. (See WAC 173-16-060 (5), (8), (11), (12), (13).)

(8) Rivers, streams and creeks. Generally, rivers, streams and creeks can be defined as surface-water runoff flowing in a natural or modified channel. Runoff results either from excessive precipitation which cannot infiltrate the soil, or from ground water where the water table intersects the surface of the ground. Drawn by gravity to progressively lower levels and eventually to the sea, the surface runoff organizes into a system of channels which drain a particular geographic area.

The drainage system serves as a transportation network for nature's leveling process, selectively eroding materials from the higher altitudes and transporting the materials to lower elevations where they are deposited. A portion of these materials eventually reaches the sea where they may form beaches, dunes or spits.

Typically, a river exhibits several distinct stages as it flows from the headwaters to the mouth. In the upper reaches where the gradient is steepest, the hydraulic action of the flowing water results in a net erosion of the stream bed and a V-shaped cross section, with the stream occupying all or most of the valley floor.

Proceeding downstream, the gradient decreases and the valley walls become gentler in slope. A point is eventually reached where erosion and deposition equalize and the action of the stream changes from vertical cutting to lateral meandering. As the lateral movement continues, a flood plain is formed, over which the river meanders and upon which materials are deposited during floods. Finally, when the river enters a body of standing water, the remaining sediment load is deposited.

Extensive human use is made of rivers, including transportation, recreation, waste and sewage dumping and for drinking water. Rivers are dammed for the production of electric power, diked for flood control and withdrawn for the irrigation of crops. Many of these activities directly affect the natural hydraulic functioning of the streams and rivers as well as the biology of the water courses. (See WAC 173-16-060(17).)

(9) Flood plains. A flood plain is a shoreland area which has been or is subject to flooding. It is a natural corridor for water which has accumulated from snow melt or from heavy rainfall in a short period. Flood plains are usually flat areas with rich soil because they have been formed by deposits from flood waters. As such they are attractive places for man to build and farm until the next flood passes across the plain. In certain areas, these plains can be "flood proofed" by diking or building levees along the adjacent river or stream, but always with provisions for tremendous amounts of water that will sooner or later be generated by weather conditions. Streamway modifications can be placed in such a way to cause channelization. Channelization tends to destroy the vital and fragile flood-plain-shoreline habitats and increase the velocity of waters in times of extreme flow. (See WAC 173-16-060(17).)

This may cause considerable damage downstream even in areas already given some flood protection. In unprotected flood plains, land-use regulations must be applied to provide an adequate open corridor within which the effects of bank erosion, channel shifts and increased runoff may be contained. Obviously, structures which must be built on a flood plain should be of a design to allow the passage of water and, wherever possible, permanent vegetation should be preserved to prevent erosion, retard runoff, and contribute to the natural beauty of the flood plain.

(10) Puget Sound. Puget Sound is a complex of interconnected inlets, bays and channels with tidal sea water entering from the west and freshwater streams entering at many points throughout the system. Most of what is known as Puget Sound was formed by glacial action that terminated near Tenino in Thurston County. The entire system, of which Puget Sound is actually a small portion, also includes the Strait of Georgia and the Strait of Juan de Fuca. The large complex may be divided into nine oceanographic areas which are interrelated: Strait of Juan de Fuca, Admiralty Inlet, Puget Sound Basin, Southern Puget Sound, Hood Canal, Possession Sound, Bellingham Bay, San Juan Archipelago, and Georgia Strait (from *Puget Sound and Adjacent Waters, Appendix XV, Plan Formulation.*)

The economic development of the central Puget Sound Basin has been stimulated by the fact that the sound is one of the few areas in the world which provides several deepwater inland harbors. The use of Puget Sound waters by deep-draft vessels is on the increase due to its proximity to the developing Asian countries. This increased trade will attract more industry and more people which will put more use pressure on the Sound in the forms of recreation (sport fishing, boating and other water-related sports) and the requirements for increased food supply.

Puget Sound waters are rich in nutrients and support a wide variety of marine fish and shellfish species. An estimated 2,820 miles of stream are utilized by anadromous fish for spawning and rearing throughout the area. Some of these fish are chinook, coho, sockeye, pink and chum salmon, steelhead, searun cutthroat and Dolly Vardon trout. All these fish spend a portion of their lives

in the saltwaters of Puget Sound and the Pacific Ocean before returning to streams of origin to spawn. The juveniles of these fish spend varying amounts of time in the shore waters of the area before moving to sea to grow to maturity. Aquaculture or sea farming is now in the process of becoming reality in the Puget Sound complex. The mass production of seaweed, clams, geoducks, scallops, shrimp, oysters, small salmon, lobsters and other possibilities looms as an important new industry. Shoreline management is particularly crucial to the success of sea farming. Aquaculture on any scale can be compatible and coexist with maritime shipping and shoreland industrial activities only be careful planning and regulation.

The shoreline resources of Puget Sound include few beach areas which are not covered at high tide. Bluffs ranging from 10 to 500 feet in height rim nearly the entire extent of the Sound making access to beach and intertidal areas difficult. Because of the glacial-till composition of these bluffs, they are susceptible to fluvial and marine erosion and present constant slide hazards. Although Puget Sound is protected from the direct influence of Pacific Ocean weather, storm conditions can create very turbulent and sometimes destructive wave action. Without recognizing the tremendous energy contained in storm waves, development of shoreline resources can be hazardous and deleterious to the resource characteristics which make Puget Sound beaches attractive. (WAC 173-16-060 (11), (12), (13).)

(11) Pacific Ocean. From Cape Flattery on the north to Cape Disappointment on the south, there are approximately 160 miles of beaches, rocky headlands, inlets and estuaries on Washington's Pacific Coast. The shoreline south of Cape Flattery to the Quinault River is generally characterized as being rugged and rocky, with high bluffs. The remaining shoreline south of the Quinault River is predominantly flat sandy beaches with low banks and dunes.

During the winter, Pacific currents set toward the north, while during summer months they set to the south. Associated with the summer currents is a general offshore movement of surface water, resulting in upwelling of water from lower depths. This upwelled water is cold, high in salinity, low in oxygen content and rich in nutrients. It is this latter characteristic which causes upwelled water to be extremely significant in biological terms, since it often triggers "blooms" of marine plant life.

Directions of wave action and littoral drift of sediments shift seasonally with Pacific Ocean storms. Although very little data are available on the net direction of littoral transport, the University of Washington has offshore data which indicate a northerly offshore flow. RCW 43.51.650 declares:

"The beaches bounding the Pacific Ocean from the Straits of Juan de Fuca to Cape Disappointment at the mouth of the Columbia River constitute some of the last unspoiled seashore remaining in the United States. They provide the public with almost unlimited opportunities for recreational activities, like swimming, surfing and hiking; for outdoor sports, like hunting, fishing, clamming, and boating; for the observation of nature as it existed for hundreds of years before the arrival of white men and for relaxation away from the pressures and tensions of modern life. In past years, these recreational activities have been enjoyed by countless Washington citizens, as well as by tourists from other states and countries. The number of people wishing to participate

in such recreational activities grows annually. This increasing public pressure makes it necessary that the state dedicate the use of the ocean beaches to public recreation and to provide certain recreational and sanitary facilities. Nonrecreational use of the beach must be strictly limited. Even recreational uses must be regulated in order that Washington's unrivaled seashore may be saved for our children in much the same form as we know it today." (See Appendix Reference Nos. 30 and 31.)

[Order DE 72-12, § 173-16-050, filed 6/20/72 and 7/20/72.]

WAC 173-16-060 The use activities. This section contains guidelines for the local regulation of use activities proposed for shorelines. Each topic, representing a specific use or group of uses, is broadly defined and followed by several guidelines. These guidelines represent the criteria upon which judgments for proposed shoreline developments will be based until master programs are completed. In addition, these guidelines are intended to provide the basis for the development of that portion of the master program concerned with the regulation of such uses.

In addition to application of the guidelines in this section, the local government should identify the type or types of natural systems (as described in WAC 173-16-050) within which a use is proposed and should impose regulations on those developments and uses which would tend to affect adversely the natural characteristics needed to preserve the integrity of the system. Examples would include but would not be limited to proposed uses that would threaten the character of fragile dune areas, reduce water tables in marshes, impede water flow in estuaries, or threaten the stability of spits and bars.

These guidelines have been prepared in recognition of the flexibility needed to carry out effective local planning of shorelines. Therefore, the interpretation and application of the guidelines may vary relative to different local conditions. Exceptions to specific provisions of these guidelines may occur where local circumstances justify such departure. Any departure from these guidelines must, however, be compatible with the intent of the act as enunciated in RCW 90.58.020.

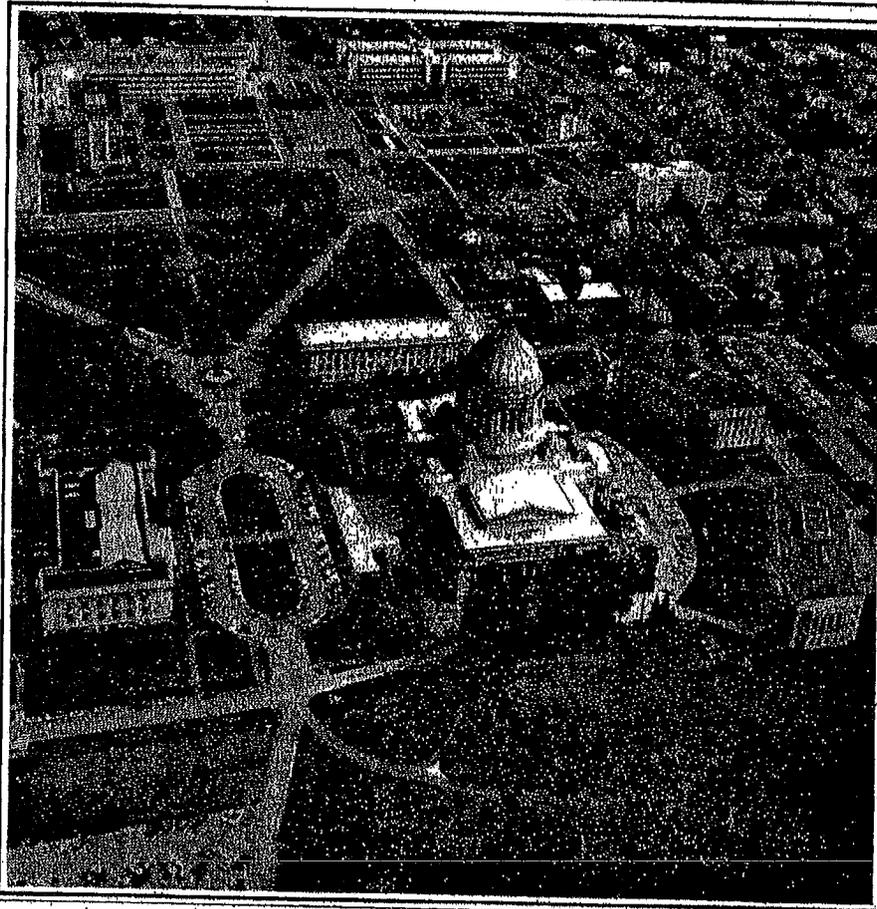
It should be noted that there are several guidelines for certain activities which are not explicitly defined in the shoreline act as developments for which substantial development permits are not required (for example, the suggestion that a buffer of permanent vegetation be maintained along water bodies in agriculture areas.) While such activities generally cannot be regulated through the permit system, it is intended that they be dealt with in the comprehensive master program in a manner consistent with policy and intent of the Shoreline Act. To effectively provide for the management of the shorelines of the state, master programs should plan for and foster all reasonable and appropriate uses as provided in RCW 90.58.020.

Finally, most of the guidelines are intentionally written in general terms to allow some latitude for local government to expand and elaborate on them as local conditions warrant. The guidelines are adopted state regulations, however, and must be complied with both in permit application review and in master program development.

(1) Agricultural practices. Agricultural practices are those

APPENDIX B

1982 FINAL LEGISLATIVE REPORT



Forty-Seventh Legislature of Washington State
Regular and First Special Sessions

SSB 4963

C 3 L 82 E1

BRIEF TITLE: Authorizing an extended industrial development levy by port districts.

SPONSORS: Senate Committee on Transportation (Originally Sponsored by Senators von Reichbauer and Talley)

SENATE COMMITTEE: Transportation

HOUSE COMMITTEE: Labor and Economic Development

BACKGROUND:

In 1955, the Legislature provided authority for public port districts to create an industrial development district and to develop land within their boundaries to attract industry. To accomplish this, in 1957 ports were given the authority to levy a tax of up to 45 cents per thousand dollars of assessed valuation, for any six consecutive years, later amended to any six years.

Since 1955, more than 15 port districts have established industrial development districts and a number have collected the tax. Because these levies were for six years, they have since expired and are no longer available for use by many port districts.

SUMMARY:

The number of years a port district may impose an industrial development levy, not exceeding 45 cents per thousand dollars of assessed valuation, is extended from six to 12 years. A provision is made for a referendum on the seventh through twelfth years of the levy if, within 90 days of the port providing notice of the levy, 8 percent of the voters voting in the last election for Governor sign a petition to put the levy on the ballot.

The industrial development levy is separated from other regular property taxes imposed by port districts for the purpose of calculating the 106 percent levy limitation. The first industrial development levy imposed by a port district after the effective date of the act is exempted from the 106 percent levy limitation.

VOTES ON FINAL PASSAGE:

Regular Session

Senate 33 13
House 84 12 (House amended)
Senate (Senate refused to concur)

First Special Session

Senate 31 13
House 78 13 (House amended)
Senate (Senate refused to concur)
House 77 19 (House receded)

EFFECTIVE: April 1, 1982

SB 4972

C 49 L 82 E1

BRIEF TITLE: Relating to local government finance.

SPONSOR: Senator Zimmerman

SENATE COMMITTEE: Local Government

HOUSE COMMITTEE: Rules

BACKGROUND:

The current reductions in federal and state aid to local governments have sharply curtailed the ability of these entities to provide basic services to their residents. New sources of revenue need to be provided so that the public health, welfare and safety are adequately protected.

The building and construction industry has also been hard hit by current economic conditions. Some contend that the imposition of fees by several cities and a few counties in the state on housing developments and other construction projects beleaguer an already troubled industry. Restrictions on the imposition of development fees would provide much needed assistance for the industry.

SUMMARY:

The Legislature recognizes the concern local governments have regarding the financing of vital services to the public, and intends that these services be seen as top priorities by the local governmental entities.

No city or town may impose a franchise fee or any type of fee upon the light and power, telephone, or gas distribution businesses except for regular business and occupation taxes and administrative expenses incurred because of these businesses. Franchise fees

imposed by contract prior to the effective date of this act are not prohibited.

The rate of tax imposed on the privilege of conducting an electrical energy, natural gas, or telephone business may not be increased on those business activities occurring before the effective date of the increase. A proposed rate change may take effect sixty days after enactment of the ordinance establishing the change.

Because the development fees provision is enacted into law, municipal utility tax rates are limited to 6 percent unless an increase is approved by a majority of the voters. Procedures are outlined for phasing down current municipal utility tax rates in excess of 6 percent by requiring cities or towns to reduce the rate each year according to prescribed formulas.

Development fees are substantially restricted so that no county, city, town or municipal corporation may impose a tax or fee on any construction project. However, dedications of land and easements shown to be reasonably necessary as a direct result of the development are permitted. Voluntary agreements authorizing a payment in lieu of a dedication of land are permitted, provided that the payment is held in a reserve account, only expended for capital improvements, and is expended within five years. A payment not expended within five years will be refunded with interest. However, if the developer is responsible for a delay beyond five years, the refund will be without interest.

All payments must be reasonably necessary as a direct result of the proposed development.

Reasonable fees to cover governmental expenses in processing development applications, reviewing plans or preparing environmental impact statements are still permitted. Special assessments on property specifically benefited thereby are permitted.

General purpose local governments may continue to impose utility system development charges without expansion or contraction of their existing authority.

Special purpose districts, pursuant to RCW Chapters 54, 56, 57 and 87 (PUDs, water, sewer, irrigation), are specifically excluded from the restrictions placed on development fees.

The imposition of business and occupation taxes and sales and use taxes by cities and towns are not precluded, but counties are not authorized to impose business and occupation taxes.

The city business and occupation sales tax authority is limited to .2 percent of gross receipts or income. Any city whose business and occupation tax rate on sales on January 1, 1982 was higher than .2 percent and any

city which has separate classifications for various businesses or services will be limited to a maximum increase in the January rate of 10 percent, not to exceed an annual incremental increase of 2 percent of the current rate. Business and occupation surtaxes in effect on January 1, 1982 will expire either on December 31, 1982 or by the local ordinance expiration date. Cities imposing a license fee or business and occupation tax on retail sales must report the rate and revenues received annually to the Department of Revenue. Business and occupation tax rates in excess of these provisions may be approved by a majority vote of the qualified voters of any city or town.

The Municipal Research Council is required to conduct a survey of all business and occupation tax rates in the state. The survey results will be reported to the Legislature by July 1, 1982.

Because the development fees provision is enacted into law, cities and counties are authorized to levy a real estate excise tax not exceeding one-quarter of 1 percent. This authorization is intended to replace the loss of revenue from the restriction on system development charges. Those entities which do not levy the additional one-half of 1 percent sales tax are authorized to levy a second real estate excise tax not exceeding one-half of 1 percent.

One percent of the proceeds from the real estate excise tax shall be allocated to the county for its costs incurred in collecting the tax. The proceeds from the first one-quarter real estate excise tax levied in lieu of development fees will be used for capital purposes, while any additional real estate excise tax levied in lieu of the additional half-cent sales tax will be used for general government purposes.

The real estate excise tax will be a lien upon real property.

The taxes levied under this act are the obligation of the seller and may be enforced through an action of debt against the seller or in the manner of a foreclosure of a mortgage.

The treasurer of the county within which the real property is located (which was sold to satisfy the real estate excise tax) will act as an agent for the city imposing the tax. A process for the collection of real estate excise taxes is established.

The taxes authorized in this section must comply with the body of law concerning imposition of real estate excise taxes by the state.

Because the development fees provision is enacted into law, a county or city may levy up to an additional one-half of 1 percent sales tax. In the event a sales

and use tax is imposed by both a county and a city within the county, the county will receive 15 percent of the city tax revenue.

A credit against the county tax for the full amount of any city sales or use tax upon the same taxable event is required in any county ordinance imposing sales and use taxes.

An initiative process is authorized for: the first time imposition of any business and occupation tax, as well as any increase in the tax after the effective date of this act; imposition of an additional sales tax; imposition of any real estate excise tax in excess of one-quarter of 1 percent. If the voters already possess the general power of initiative, the initiative procedure will conform to that standard. If the voters do not possess the power of initiative, the procedure shall be in compliance with the initiative petitions provided for code cities.

A procedure for allocating the motor vehicle excise tax to cities and counties is established. Of the seventeen percent of all MVET receipts already allocated to cities, 65 percent will be apportioned on the basis of population and 35 percent will be apportioned to the municipal sales and use tax equalization account. An additional two percent of the MVET receipts will be allocated to the county sales and use tax equalization account.

The State Treasurer will apportion to each county imposing the existing sales and use tax at the maximum rate and receiving less than \$150,000 from the tax in the previous year, an amount from the county equalization account sufficient to equal \$150,000 when added to the revenues received the previous year. These same counties will be entitled to receive an additional amount from the equalization fund so that their total sales tax revenues will equal 70 percent of the statewide weighted average per capita level of revenues for unincorporated areas. Counties which receive this distribution, and which also impose the additional sales and use tax for an entire calendar year, may be entitled to another equivalent distribution. All of the distributions from the equalization account are subject to the following limitations:

- (1) revenues distributed may not exceed an amount equal to 70 percent of the statewide weighted average per county level of revenues for the unincorporated areas of all counties;
- (2) if inadequate revenues exist in the equalization account, then the distributions will be reduced ratably among the counties; and

- (3) if revenues in the account exceed the amount required for equalization, then the additional revenues will be credited and transferred to the state general fund.

A "municipal sales and use tax equalization account" is created into which the revenues from the apportionment of the motor vehicle excise taxes are placed.

The State Treasurer will apportion to each city not imposing the additional sales and use tax an amount equal to 65 percent of the MVET allocation to cities multiplied by 35/65. Each city which does impose the existing sales and use tax at the maximum rate, but receives less than 70 percent of the statewide weighted average per capita level of revenues for all cities, will receive an amount from the municipal equalization account sufficient to bring it up to the 70 percent figure. Cities which receive this second distribution may be entitled to a third distribution. To qualify for this third distribution, the additional sales tax must be imposed at the maximum rate for the entire calendar year. If the tax is not imposed for the full year, the cities will receive prorated allocations proportionate to the number of months the tax was imposed.

The distributions from the equalization account are subject to the following limitations:

- (1) if inadequate revenues exist in the equalization account, then the distributions will be reduced ratably among the cities; and
- (2) if the equalization account exceeds its necessary revenues, then the additional revenues will be apportioned among the cities which impose a sales and use tax.

Funding for fire district services will be considered by county legislative authorities when levying the optional taxes authorized in this act.

Future Obligation: The Municipal Research Council will conduct a survey of the business and occupation tax rates throughout the state and report on the results to the Legislature by July 1, 1982. The Local Government Committees of both houses of the Legislature will study fire district services and funding thereof and report on the results to the Legislature by December 31, 1982.

VOTES ON FINAL PASSAGE:

<u>First Special Session</u>		
Senate	29	17
House	75	23

EFFECTIVE: July 1, 1982 (Section 5)
April 20, 1982 (all other sections)

OFFICE RECEPTIONIST, CLERK

To: French, Danielle (ATG)
Cc: Wood, Kelly (ATG); Shirey, Kay (ATG)
Subject: RE: E-filing in Citizens for Rational Shoreline Planning v. Whatcom County, No. 84675-8

Rec. 2-1-11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: French, Danielle (ATG) [<mailto:DanielleF@ATG.WA.GOV>]
Sent: Tuesday, February 01, 2011 8:22 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Wood, Kelly (ATG); Shirey, Kay (ATG)
Subject: RE: E-filing in Citizens for Rational Shoreline Planning v. Whatcom County, No. 84675-8

Attached are the appendices to the State's Supplemental Brief.

Danielle

From: French, Danielle (ATG)
Sent: Tuesday, February 01, 2011 8:21 AM
To: 'Supreme@courts.wa.gov'
Cc: Wood, Kelly (ATG); Shirey, Kay (ATG)
Subject: RE: E-filing in Citizens for Rational Shoreline Planning v. Whatcom County, No. 84675-8

Dear Clerk,

Pursuant to my conversation with your office this morning, I am attempting to re-file the documents below. I received the attached email message at 5:27 p.m. yesterday, stating it was undeliverable. I will send the supplemental brief and certificate of service with this email, and then send a second email with the appendices.

Please confirm your acceptance of this filing.

Thanks,

Danielle French
Legal Assistant
Washington Attorney General's Office
Ecology Division
PO Box 40117, Olympia, WA 98504-0117
(360) 586-8171
daniellef@atg.wa.gov

Print only if necessary.

From: French, Danielle (ATG)
Sent: Monday, January 31, 2011 12:29 PM

To: 'Supreme@courts.wa.gov'

Cc: Wood, Kelly (ATG); Shirey, Kay (ATG)

Subject: E-filing in Citizens for Rational Shoreline Planning v. Whatcom County, No. 84675-8

Dear Clerk,

Attached for filing in *Citizens for Rational Shoreline Planning, et al. v. Whatcom County, et al.*, Supreme Court No. 84675-8, are the Supplemental Brief of Respondent State of Washington Department of Ecology and Certificate of Service. Thank you for your assistance.

Sincerely,

Danielle French

Legal Assistant to Kelly Wood, WSBA #40067

Washington Attorney General's Office

Ecology Division

P.O. Box 40117, Olympia, WA 98504-0117

(360) 586-8171

daniellef@atg.wa.gov

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