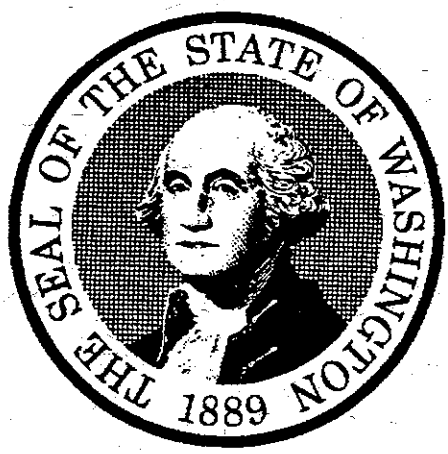

Washington State Shorelines Hearings Board

Digest of Decisions

1994 Supplement to the Fourth Edition

Washington State Department of Ecology
Publication No. 95-110

For additional copies of this document, please contact:

Department of Ecology
Publications Distributions Center
PO Box 47600
Olympia, WA 98504-7600
(360) 407-7472

Acknowledgements

This Digest was funded by the Washington State Department of Ecology and the National Oceanic and Atmospheric Administration.

This Digest contains summaries of decisions as an aid to research. The full text of decisions are available from these two services:

1. WESTLAW®
West Publishing
620 Opperman Drive
Eagan, Minnesota 55123

For information on subscriptions to WESTLAW®, call 1-800-328-9352.

Current WESTLAW® subscribers may call 1-800-REF-ATTY for detailed information about access to Hearings Board decisions.

2. Washington State Environmental Reporter
Book Publishing Company
201 Westlake Avenue N.
Seattle, Washington 98109

For information, call: 1-800-537-7881 or (206) 343-5700.

Table of Contents

Forward

This publication is a supplement to the Fourth Edition of the *Washington State Shorelines Hearings Board Digest of Decisions*, Publication Number 94-167, which summarizes Shorelines Hearings Board decisions made between 1971 and 1993. This supplement summarizes the final decisions made during 1994. Also included are several case summaries inadvertently omitted from the Fourth Edition of the Digest.

The opinions in this volume are organized first by topic under the Analytic Outline, and second, by case name and number under the Table of Final Decisions. In addition, there is a Table of Pertinent Court Cases reflecting the appellate case law.

The author of this supplement is Phyllis Macleod. Appreciation is also due to Tim Gates, Sue Smith, and Don Bales for their assistance.

Analytical Outline

SHORELINES HEARINGS BOARD
DIGEST OF DECISIONS

1. JURISDICTION
1.1. Shoreline Developments
1.1.1. Development
1.1.2. Substantial Developments

1.1.3. Developments Prior to SMA

A structure that predates the SMA and fails to meet the requirements of the master program is considered non-conforming. Expansion of a non-conforming use or structure is evaluated as a request for variance.
Robert Gilbert and Mason County v. Department of Ecology, SHB No. 94-14.

1.1.4. Shorelines of the State

Long-term lowering of the lake level at Lake Cushman by the City of Tacoma in conjunction with hydroelectric operations is not a natural change of the lake level, but rather an artificial or man-made change. The ordinary high water mark will remain at the original level until it changes naturally or changes through the issuance of a shoreline permit or permits under the SMA.
Robert D. Darby and Mason County v. Department of Ecology, SHB No. 92-39.

Determining the location of the upland extent of a marine environment requires consideration of several factors, but vegetation is a key indicator. Isolated storm events do not dictate the location of the ordinary highwater mark. It is inappropriate to use mean higher high tide if the ordinary highwater mark can be located.
Carol R. Cassinelli, et al., v. City of Seattle and George Norgaard, SHB No. 93-46 and 93-47.

1.2. Shorelines Hearings Board
1.2.1. Filing by Local Government with Department and Attorney General
1.2.2. Filing of Request for Review, Time Measurements

Neither the SMA nor the Shorelines Hearings Board rules require dismissal of an appeal for petitioner's failure to name a property owner as a party within the appeal period, unless there is actual prejudice shown.
Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.

An appeal of a shoreline variance must be filed within thirty days of the date of filing. The date of filing for a variance approved by local government is defined at RCW 90.58.140(6) as the date a decision by Ecology is transmitted to the local government. If an interested party has not requested a copy of the decision under RCW 90.58.140(4), lack of actual notice does not extend the filing deadline.
McGivney v. Iverson, Pierce County, and Department of Ecology, SHB No. 94-29.

1.2.3. Filing of Request for Review with Department and Attorney General

Concurrent filing of an appeal with Ecology and the Attorney General must be completed within the original thirty-day appeal period. Failure to file concurrently can be cured by filing within the thirty days allowed for certification and not later than the actual certification date of either agency. Failure to so perfect an appeal deprives the Shorelines Hearing Board of jurisdiction over the matter.
Shaner, et al., and Skagit County v. Department of Ecology, SHB No. 93-10.
Colby, et al., and Skagit County v. Department of Ecology, SHB No. 93-11.

1.2.4. Certification; Person Aggrieved; Standing

The Shoreline Hearings Board cannot review and has no jurisdiction to consider a request for review which the Department of Ecology or Attorney General has refused to certify, pursuant to RCW 90.58.180(1).
Truly v. City of Bothell, SHB No. 94-39

1.2.5. Jurisdiction, Subject Matter
1.2.5. (a) Necessity of Permit or Application

The Shoreline Hearings Board has no jurisdiction over a local government decision to extend a permit's expiration date nor over a determination that substantial progress has been made under a permit because these actions are not the "granting, denying or rescinding" of a permit.
Taylor v. City of Langley and Paul Schell, SHB No. 93-39.

1.2.5. (b) Ownership Issues
1.2.5. (c) Substantive Constitutional Issues
1.2.5. (d) Limitation of Jurisdiction
1.2.5. (e) Dismissal by Board

Failure to pursue an appeal after notice from Shoreline Hearings Board can result in dismissal of the appeal.
Concerned Residents and Neighbors of 43rd Avenue E. v. City of Seattle and Rogers, SHB No. 94-24.

1.2.5. (f) Issues

The doctrine of collateral estoppel properly bars a subsequent owner from a second hearing on a project when identity of subject matter is present and no injustice is demonstrated.
Advanced Resorts of America, Inc. v. Town of LaConner, SHB No. 94-2.

Notwithstanding a local ordinance, the provisions of the SMA and precedents of the Shorelines Hearing Board do not contemplate modified substantial development permits and the Shoreline Hearings Board will not review such action. Proper procedure would involve permit revision under the standards of WAC 173-14-064 or a new permit application.
Percich and Moorhouse v. Town of Friday Harbor, SHB No. 94-27.

2. EXEMPTIONS FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS

3. REVIEW OF REGULATIONS

4. PERMIT PROCEEDINGS BY LOCAL GOVERNMENT
4.1. Local Government As "State Agency"
4.2. Nature of Function
4.3. Notice
4.4. Hearing
4.4.1. Necessity of
4.4.2. Nature of
4.4.3. Appearance of Fairness

5. APPEALS FROM LOCAL GOVERNMENT DECISIONS
5.1. Standards of Review
5.2. Scope of Review
5.3. Burden of Proof

6. PERMITS AND APPLICATIONS
6.1. Adequacy, Description
6.2. Conditions
6.2.1. Requirement of, on Face of Permit
6.2.2. Basis, Reasonableness of Conditions
6.2.3. Modification or Addition of Conditions

The Shorelines Hearing Board may condition approval of a shoreline permit to achieve consistency with the SMA. A condition limiting blasting activity during the winter months is necessary to achieve the SMA goal of protecting against adverse effects to wildlife (in this case, Trumpeter Swans).
Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.

6.2.4. Authority of Local Government
6.3. Rescission
6.4. Operations Outside Scope of Permit
6.5. Finding of Inconsistency, Effect of
6.6. Nature of
6.7. Revisions

Revisions to a substantial development permit and conditional use permit allowing additional residential and viewshed uses in a conservancy zone violates WAC 173-14-064(2)(e), (f), and (g).
Clark County Citizens in Action v. Vanport Manufacturing, Department of Ecology, and City of Camas, SHB No. 93-71.

Notwithstanding a local ordinance, the provisions of the SMA and precedents of the Shorelines Hearing Board do not contemplate modified substantial development permits and the Shoreline Hearings Board will not review such action. Proper procedure would involve permit revision under the standards of WAC 173-14-064 or a new permit application.
Percich and Moorhouse v. Town of Friday Harbor, SHB No. 94-27.

6.7.1. Scope and Intent of Original Permit

A Shorelines Hearing Board inquiry on a permit revision is limited to whether the permit as revised is within the scope and intent of the original permit. The intent of a permit relates to the type of land use authorized, while the scope of a permit relates to the actual development that will be constructed.
Marvin and Kay Guon v. City of Vancouver, Tidewater Barge Lines, and Department of Ecology, SHB No. 94-11.

6.7.2. Granting of

7. STATE ENVIRONMENTAL POLICY ACT
7.1. Review for SEPA Compliance Required
7.2. When Issues Must be Raised
7.3. Purpose
7.4. Application to Substantial Development Permits, Exemptions
7.5. Threshold Decision

The discovery of rock markings alleged to be petroglyphs is sufficient new information to require preparation of an addendum to the mitigated DNS for consideration by the Shorelines Hearing Board.
Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.

7.5.1. Who Makes Decision; Responsible Official
7.5.2. Form Required

7.5.3. Circulation and Comment

The right to special notice of a proposal under SEPA rules (WAC 197-11-340) is inapplicable if a Tribe lacks federal recognition. The Tribe members were only entitled to the same notice due all members of the public.
Chinook Tribe of Indians v. Wahkiakum County and Wahkiakum County Port District #2, SHB No. 93-26.

7.5.4. Record Considered
7.6. Draft EIS Preparation and Contents
7.6.1. Who Can Prepare Draft
7.7. Final EIS
7.7.1. Form
7.7.2. Comments and Responses to Draft EIS
7.7.3. Adequacy
7.8. Supplements to Final EIS
7.9. Use of EIS
7.10. Supplementary Nature

8. SHORELINE MANAGEMENT ACT
8.1. Liberal Construction
8.2. RCW 90.58.020
8.2.1. Unrestricted Construction Not in Best Public Interest
8.2.2. Prevention of Uncoordinated and Piecemeal Development

The Shorelines Hearings Board can properly take into account the cumulative impact of development in implementing the policies of the SMA. Prevention of damage to shorelines from piecemeal and uncoordinated development is one of the fundamental policies of the Shoreline Management Act.
Save Lake Sammamish, et al., v. King County, Department of Ecology, and Burnstead Construction Company, SHB No. 93-40, PCHB No. 93-240.

When a master plan for a multi-phase project has been subjected to SEPA review, approval of a shoreline permit for one phase which conformed to the overall plan does not constitute impermissible piecemealing of the review. The coercive effects characteristic of piecemeal project consideration and lack of public participation in the process did not exist in this situation.
Marvin and Kay Guon v. City of Vancouver and Tidewater Barge Lines, SHB No. 93-53.

A port adopting a master plan with four contemplated development phases must conduct a review of the potential impacts of the entire master plan under SEPA before shoreline permits for a single phase can be properly issued. Failure to engage in impact review violates the prohibition on piecemeal development under SEPA and the SMA.
Appletree Cove Protection Fund v. Kitsap County, Department of Fisheries, Port of Kingston, and Department of Ecology, SHB No. 93-55.

8.2.3. Reasonable and Appropriate Uses
8.2.4. Public Rights in Navigable Waters
8.2.5. Public Interest

The statewide public interest in enhancing anadromous fish runs and protecting the resources and ecology of the shoreline supports restoration of an existing diversion dam on the Methow River. Public interest in recreational access to the shoreline is secondary when such public access would jeopardize delicate fish resources.
Okanogan Wilderness League v. Okanogan County, U.S. Fish and Wildlife Service, and Department of Ecology, SHB No. 93-36.

8.2.6. Adverse Effects to Environment
8.2.6. (a) Public Health

Evidence failed to support any public health threat posed by hydrogen sulfide generated by decomposition of woodwaste at a waterfront park located on the site of a former timber mill.
Rosario Geoscience Associates v. City of Anacortes and Port of Anacortes, SHB No. 93-50.

8.2.6. (b) Land, Vegetation and Wildlife

A substantial development permit for a proposed mining operation should be conditioned to protect against adverse effects to wildlife by prohibiting blasting during winter months when endangered Trumpeter Swans are in the area.
Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.

8.2.6. (c) Water and Aquatic Life

The cumulative impact of bulkheads reducing available marine environment would be a significant loss to the state's natural shorelines.
Carol R. Cassinelli, et al., v. City of Seattle and George Norgaard, SHB No. 93-46 and 93-47.

8.2.7. Aesthetics
8.2.8. Preferred and Priority Uses

Restoration of an existing diversion dam on the Methow River in connection with a program to enhance anadromous fish runs is a higher preference use under the SMA than increasing public recreational access to the shoreline.
Okanogan Wilderness League v. Okanogan County, U.S. Fish and Wildlife Service, and Department of Ecology, SHB No. 93-36.

8.2.8. (a) Prevention of Environmental Damage
8.2.8. (b) Shoreline Dependent
8.2.8. (b) (1) Water Dependent

A local master program generally prohibiting residential development over water and allowing floating homes as a conditional use does not support classification of floating homes as water-dependent.
Portage Bay-Roanoke Park Community Council, et al., v. Shoreline Hearings Board, SHB No. 194 (1976) is **overruled** to the extent inconsistent.
Dwight Irby v. Department of Ecology, Cowlitz County, and Lonnie and Patti Waddle, SHB No. 93-13.

Although it is not a water dependent use, a proposed residential condominium development furthered a central objective of the SMA by increasing public access to the shoreline. The proposed condominium included right-of-way along the shoreline for a public foot trail.
Marvin and Kay Guon v. City of Vancouver and Tidewater Barge Lines, SHB No. 93-53.

8.2.8. (b) (2) Water-related

Under a local master program, quarrying rock is a water-related activity. However, in this case, crushing and screening operations are not necessary and incidental to that water-related use since blasting is the method proposed to reduce the rock to rip-rap size for removal from the site.
Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.

8.2.8. (c) Alteration of Natural Shoreline Condition

The cumulative impact of bulkheads reducing available marine environment would be a significant loss to the state's natural shorelines.
Carol R. Cassinelli, et al., v. City of Seattle and George Norgaard, SHB No. 93-46 and 93-47.

8.2.8. (c) (1) Other Developments Providing an Opportunity for the Public to Enjoy Shorelines

The Shorelines Hearing Board found that adding general retail sales and professional services to the uses allowed in a project was permissible since it would not displace or preclude water related or water enjoyment uses. The structures containing the additional uses provided enhanced public access to and views of the shoreline with amenities such as view decks and public walkways. Related Case: Percich and Moorhouse v. Town of Friday Harbor, SHB No. 94-27.
Percich and Moorhouse v. Town of Friday Harbor, SHB No. 92-23.

8.2.9. Permitted Uses, Necessity of Minimizing Adverse Effects

A substantial development permit for a proposed mining operation should be conditioned to protect against adverse effects to wildlife by prohibiting blasting during winter months when endangered Trumpeter Swans are in the area.
Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.

A proposed public trail bisecting an important historic/cultural site within a shoreline should be conditioned to minimize adverse effects on the site.
Chinook Tribe of Indians v. Wahkiakum County and Wahkiakum County Port District #2, SHB No. 93-26.

8.2.10. Shorelines
8.2.10. (a) Shorelines of Statewide Significance

A proposed public trail bisecting an important historical and cultural site along a shoreline of statewide significance should be conditioned to allow public access while protecting the historic/cultural site.
Chinook Tribe of Indians v. Wahkiakum County and Wahkiakum County Port District #2, SHB No. 93-26.

8.2.10. (a) (1) Order of Preference
8.2.10. (b) Natural Shorelines
8.2.10. (c) Non-natural Shorelines
8.3. Timber Cutting
8.4. Height Limitations

While the local master program did allow heights of up to 60 feet on the proposed condominium project, no overriding consideration of the public interest supported approval of a height greater than 35 feet. RCW 90.58.320 controls over WAC 173-14-064(2)(b). This result is particularly appropriate when a design modification could still yield the 45 residential units desired.
Marvin and Kay Guon v. City of Vancouver and Tidewater Barge Lines, SHB No. 93-53.

8.5. Prior to Adoption and Approval of Master Program
8.5.1. Guidelines
8.5.1. (a) Nature of Provisions
8.5.1. (b) Cases With No Specific Application
8.5.1. (c) Authority to Vary Provisions
8.5.1. (d) Restrictions Contemplated
8.5.1. (e) Variances and Conditional Uses
8.5.1. (f) Relation to Master Program

8.5.2. Developing Master Program
8.5.2. (a) Nature of Provisions
8.5.2. (b) Validity of Provisions
8.5.2. (c) Deviation From Guidelines
8.5.2. (d) Present Effect
8.5.2. (e) Ascertainability
8.5.2. (f) Standards Developed After Permit Issuance
8.5.2. (g) Permit Consistency Required
8.5.2. (h) Variances and Conditional Uses
8.5.2. (i) Rejection, Effect of
8.5.2. (j) Relation to Guidelines
8.6. After Adoption and Approval of Master Program
8.6.1. Master Program
8.6.1. (a) Nature of Provisions
8.6.1. (b) Validity of Provisions
8.6.1. (c) Permit Consistency Required

A shoreline master program exception from setback requirements for structures required to locate "under, on, or above water" did not apply to a proposed boardwalk. While a location waterward of the setback line would provide a better view of the Pacific Ocean, there was no evidence to support a conclusion that the boardwalk required a location "under, on, or above water." Without a master program amendment, the project would need a shoreline variance to be built as proposed.
Van Natter and Clements, et al., v. City of Ocean Shores, SHB Nos. 93-66 and 93-67.

8.6.1. (d) Amendments, Omissions

The City of Westport is barred from issuing a substantial development permit or any other shoreline permit in an area subject to the SMA but undesignated under the master program. Since the local master program had once encompassed the area, proposals cannot be evaluated directly against the SMA and Ecology guidelines and the city must revise its master program to designate the area before approving shoreline permits.
Department of Ecology v. City of Westport, Westport by the Sea, et al., SHB No. 93-73.

8.6.2. Variances and Conditional Uses
8.6.2. (a) Variances

An after-the-fact application for a shoreline setback variance, needed to accommodate a deck, failed to demonstrate the extraordinary circumstances or unnecessary hardship needed to qualify for a variance. The setback requirement was a legal limit on the land when it was purchased and a variance is not appropriate to relieve the owner from existing restrictions.
Thomas T. Peerenboom v. King County and Department of Ecology, SHB No. 93-62.

The need for a variance from shoreline setback requirements to facilitate expansion of a tavern was a self-imposed hardship caused by placing other structures in the available building area.
John I. Post d/b/a Spencer Lake Resort and Mason County v. Department of Ecology, SHB No. 93-63.

A requested variance from the 100 foot setback for a single family residence in a conservancy environment was properly denied. The need for relief resulted from the owner's voluntary act of short-platting his property. The proposed development would also cause adverse effects to the shoreline environment of a shoreline of statewide significance.
Daniel and Leah Morasch and Clark County v. Department of Ecology, SHB No. 94-10.

8.6.2. (a) (1) Types of Variances

8.6.2. (a) (2) Review

Master program standards for variances that are more restrictive than DOE criteria are binding and in this case a showing must be made that without a variance, no reasonable use of the property is allowed.
Dwight Irby v. Department of Ecology, Cowlitz County, and Lonnie and Patti Waddle, SHB No. 93-13.

Denial of a setback variance to expand a non-conforming tavern use would not cause unnecessary hardship when several other alternatives are available.
John J. Post d/b/a Spencer Lake Resort and Mason County v. Department of Ecology, SHB No. 93-63.

The fact that a county treated and taxed a parcel as a buildable lot does not require that a variance from master program setback requirements be granted to facilitate residential construction.
Daniel and Leah Morasch and Clark County v. Department of Ecology, SHB No. 94-10.

8.6.2. (a) (3) Master Program

A variance from minimum lot size and setback requirements was not justified when the applicant has reasonable use of his property without the variance. Recreational use of small shoreline parcels without homes is common to the vicinity and such activity is a reasonable use of the property.
Buechel and Mason County v. Department of Ecology, SHB No. 85-1

A variance request for an after-the-fact permit authorizing construction of a deck/dock below the ordinary high water mark of Lake Cushman fails to meet the master program criteria for variances. Allowing structures below the ordinary high water mark which do not serve a primarily water dependent use would be inconsistent with a basic principle of the SMA and would create an undesirable precedent.
Robert D. Darby and Mason County v. Department of Ecology, SHB No. 92-39.

To meet the criteria for a variance, a pier providing moorage to a residential development was limited to allow only the number of moorage slips necessary to serve the shoreline lots, to reduce the proposed size and configuration of the pier, and to preserve shallow water passage for non-motorized craft common to the area. If so conditioned, the requirements for variance were met.
Union Bay Preservation Coalition v. Cosmos Development and Administration Corporation, City of Seattle, and Department of Ecology, SHB No. 92-51.

Granting a shoreline setback variance to expand a non-conforming use based on business needs would create the possibility of cumulative impacts from other similar projects which would produce adverse effects to the urban shoreline environments of the county.
John J. Post d/b/a Spencer Lake Resort and Mason County v. Department of Ecology, SHB No. 93-63.

A proposed expansion of a non-conforming residence did not meet the criteria for granting a variance under the master program, particularly when the home could be enlarged in ways that would not encroach on setback requirements.
Robert Gilbert and Mason County v. Department of Ecology, SHB No. 94-14.

A variance from common line setbacks may be appropriate where there is no reasonable alternative on a particular lot. Even if a foundation was erroneously built, it is not appropriate when the lot provides ample opportunity to build a home outside the setback area.
John and Barbara Stevens and Chelan County v. Department of Ecology, et al., SHB No. 94-15.

8.6.2. (b) Conditional Uses

Under the local master program, in order to obtain a conditional use permit to disturb a natural environment, there must be some showing that the action is necessary to prevent damage to or destruction of the shoreline.
Matthew J. Schwietzer and Pierce County v. Department of Ecology, SHB No. 94-25.

8.7. Shoreline Regulations
8.8. Use Activities
8.8.1. Agricultural
8.8.2. Aquaculture
8.8.3. Archaeological Areas and Historic Sites

The discovery of rock markings alleged to be petroglyphs is sufficient new information to require preparation of an addendum to the mitigated DNS for consideration by the Shorelines Hearing Board. *Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.*

A substantial development permit for a public trail without conditions protecting an irreplaceable cultural and historic resource is inconsistent with the requirements of the SMA and of the local master program regarding protection of cultural and historic sites. Given the strong need for public access to the shoreline, this permit can be issued if adequate conditions are included adequate to protect the historic site.
Chinook Tribe of Indians v. Wahkiakum County and Wahkiakum County Port District #2, SHB No. 93-26.

8.8.4. Breakwaters
8.8.5. Bulkheads

The cumulative impact of similar bulkhead requests would reduce available marine environment and would be a significant loss to the state's natural shorelines.
Carol R. Cassinelli, et al., v. City of Seattle and George Norgaard, SHB No. 93-46 and 93-47.

A bulkhead proposed on a sand spit within a natural environment designation under the master program was properly denied in the absence of a showing that it was necessary to prevent damage to or destruction of the shoreline.
Matthew J. Schwietzer and Pierce County v. Department of Ecology, SHB No. 94-25.

8.8.6. Commercial Development
8.8.7. Dredging; Spoils Disposal
8.8.8. Forest Management
8.8.9. Jetties and Groins
8.8.10. Landfill
8.8.11. Manufacturing; Industrial
8.8.12. Marinas; Boat Ramps
8.8.13. Mining

Quarry rock extraction was consistent with the SMA, the SMP, and SEPA if conditioned to limit blasting effects on wildlife and to prohibit on-site screening and crushing. The on-site screening and crushing was not established as necessary and incidental to the water-related extraction in this case.
Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt, SHB No. 93-14.

8.8.14. Outdoor Advertising, Signs and Billboards
8.8.15. Piers, Docks, Floats

A proposed structure built above the normal elevations of a lake, and which has never floated free from the walkway to which it is secured by removal bolts, is not a float. Neither is it properly considered a dock. The recreational purposes it serves are most like a deck, which is considered an accessory use to a residence. The local master program does not allow such residential development over water.
Robert D. Darby and Mason County v. Department of Ecology, SHB No. 92-39.

A variance from length and size limits in the master program for a moorage pier associated with a residential development would be appropriate with additional conditions limiting the number of moorage slips to the number of shoreline lots, limiting the overall size and configuration of the dock, and preserving shallow water passage for small non-motorized craft.
Union Bay Preservation Coalition v. Cosmos Development and Administration Corporation, City of Seattle, and Department of Ecology, SHB No. 92-51.

Improvements to a small park on Fidalgo Bay, including construction of a public access float and mooring buoys for transient boaters, were consistent with local master program provisions and with the SMA goal to promote public use and access to shorelines of the state. Adding a public access float and mooring buoys to a small existing park will promote the goals of public shoreline access and use and not unduly harm the existing condition of the shoreline on this former timber mill site.
Rosario Geoscience Associates v. City of Anacortes and Port of Anacortes, SHB No. 93-50.

8.8.16. Ports and Water-related Industry
8.8.17. Recreation

A proposed public trail bisecting an important historical and cultural site along a shoreline of statewide significance should be conditioned to allow public access while protecting an historic/cultural site.
Chinook Tribe of Indians v. Wahkiakum County and Wahkiakum County Port District #2, SHB No. 93-26.

Restoration of an existing diversion dam on the Methow River in connection with a program to enhance anadromous fish runs is a higher preference use under the SMA than increasing public recreational access to the shoreline.
Okanogan Wilderness League v. Okanogan County, U.S. Fish and Wildlife Service, and Department of Ecology, SHB No. 93-36.

Improvements to a small park on Fidalgo Bay, including construction of a public access float and mooring buoys for transient boaters, were consistent with local master program provisions and with the SMA goal to promote public use and access to shorelines of the state.
Rosario Geoscience Associates v. City of Anacortes and Port of Anacortes, SHB No. 93-50.

A proposed boardwalk near Ocean Shores is intended to serve state wide over local interest and would tend to control access to, and minimize potential damage to the marram grass and primary dune area; however, the project does not come within the master program exception from setback requirements for a project requiring a location "under, on, or above waters " A shoreline variance or master program amendment would be required to allow the project in the proposed location.
Van Natter and Clements, et al., v. City of Ocean Shores, SHB Nos. 93-66 and 93-67.

8.8.18. Residential Development

Recreational use of small shoreline parcels, without the presence of homes, occurs in the vicinity of the subject lot. Since such use is available to the applicant, the threshold requirement for a variance under the master program is not met. The applicant has a reasonable use of his property without a variance.
Buechel and Mason County v. Department of Ecology, SHB No. 85-1

The proposed structure, though referred to as a dock or float, actually serves recreational purposes most like a deck. A deck is considered residential development which is prohibited over water by the local master program and cannot be allowed by variance. WAC 173-14-140(3); 150(5).
Robert D. Darby and Mason County v. Department of Ecology, SHB No. 92-39.

A shoreline master program waterward dock limit line applies to floating homes. Any extension beyond that line would require compliance with the standards for a variance.
Dwight Irby v. Department of Ecology, Cowlitz County, and Lonnie and Patti Waddle, SHB No. 93-13.

A condominium development along the Columbia River, a shoreline of statewide significance, is not a water dependent use. However, a substantial public benefit is provided by dedication of right of way along the project shoreline for a public foot trail. If the proposal is limited to 35 feet in height, it complies with other requirements of the local master program and the SMA.
Marvin and Kay Guon v. City of Vancouver and Tidewater Barge Lines, SHB No. 93-53.

The fact that a county treated and taxed a parcel as a buildable lot does not require that a variance from master program requirements be granted to facilitate residential construction.
Daniel and Leah Morasch and Clark County v. Department of Ecology, SHB No. 94-10.

A variance from common line setbacks may be appropriate where there is no reasonable alternative on a particular lot. Even if a foundation was erroneously built, it is not appropriate when the lot provides ample opportunity to build a home outside the setback area.
John and Barbara Stevens and Chelan County v. Department of Ecology, et al., SHB No. 94-15

8.8.19. Road and Railroad Design and Construction
8.8.20. Shoreline Flood Protection
8.8.21. Solid Waste Disposal
8.8.22. Subdivisions
8.8.23. Utilities

A stormwater system, including an outfall with stilling pond, is a utility under the SMP and the permit for it serves the policies of SMA by protecting a natural environment and facilitating public access to the shoreline.
Robert G. Dreyfuss and Clark County Natural Resources Council v. Clark County and Stan Sorenson, SHB Nos. 93-20 and 93-33.

8.9. Penalties

TABLE OF FINAL DECISIONS - *By Name*

TABLE OF FINAL DECISIONS - *By Name*

TABLE OF FINAL DECISIONS - *By Case Number*

SHB No.	
85-1	Buechel and Mason County v. Department of Ecology
92-23	Percich and Moorhouse v. Town of Friday Harbor
92-39	Robert D. Darby and Mason County v. Department of Ecology
92-51	Union Bay Preservation Coalition v. Cosmos Development and Administration Corporation, City of Seattle, and Department of Ecology
93-10	Shaner, et al., and Skagit County v. Department of Ecology
93-11	Colby, et al., and Skagit County v. Department of Ecology
93-13	Dwight Irby v. Department of Ecology, Cowlitz County, and Lonnie and Patti Waddle
93-14	Citizens, et al., v. Skagit County, Department of Ecology, and Tewalt
93-20	Robert G. Dreyfuss and Clark County Natural Resources Council v. Clark County and Stan Sorenson
93-26	Chinook Tribe of Indians v. Wahkiakum County and Wahkiakum County Port District #2
93-33	Robert G. Dreyfuss and Clark County Natural Resources Council v. Clark County and Stan Sorenson
93-36	Okanogan Wilderness League v. Okanogan County, U.S. Fish and Wildlife Service, and Department of Ecology
93-39	Taylor v. City of Langley and Paul Schell
93-40, PCHB No. 93-240	Save Lake Sammamish, et al., v. King County, Department of Ecology, and Burnstead Construction Company
93-46	Carol R. Cassinelli, et al., v. City of Seattle and George Norgaard
93-47	Carol R. Cassinelli, et al., v. City of Seattle and George Norgaard
93-50	Rosario Geoscience Associates v. City of Anacortes and Port of Anacortes
93-53	Marvin and Kay Guon v. City of Vancouver and Tidewater Barge Lines
93-55	Appletree Cove Protection Fund v. Kitsap County, Department of Fisheries, Port of Kingston, and Department of Ecology
93-62	Thomas T. Peerenboom v. King County and Department of Ecology
93-63	John J. Post d/b/a Spencer Lake Resort and Mason County v. Department of Ecology
93-66	Van Natter and Clements, et al., v. City of Ocean Shores
93-67	Van Natter and Clements, et al., v. City of Ocean Shores
93-71	Clark County Citizens in Action v. Vanport Manufacturing, Department of Ecology, and City of Camas
93-73	Department of Ecology v. City of Westport, Westport by the Sea, et al.
94-2	Advanced Resorts of America, Inc. v. Town of LaConner
94-10	Daniel and Leah Morasch and Clark County v. Department of Ecology
94-11	Marvin and Kay Guon v. City of Vancouver, Tidewater Barge Lines, and Department of Ecology

TABLE OF FINAL DECISIONS - *By Case Number*

SHB No.	
94-14	Robert Gilbert and Mason County v. Department of Ecology
94-15	John and Barbara Stevens and Chelan County v. Department of Ecology, et al.
94-24	Concerned Residents and Neighbors of 43rd Avenue E. v. City of Seattle and Rogers
94-25	Matthew J. Schwietzer and Pierce County v. Department of Ecology
94-27	Percich and Moorhouse v. Town of Friday Harbor
94-29	McGivney v. Iverson, Pierce County, and Department of Ecology
94-39	Truly v. City of Bothell

TABLE OF FINAL DECISIONS

Page Reference Table

SHB No.	Page Number
85-1	8, 10
92-23	6
92-39	1, 8-10
92-51	8, 10
93-10	1
93-11	1
93-13	5, 8, 10
93-14	1, 3, 5, 6, 9
93-20	11
93-26	4, 6, 9, 10
93-33	11
93-36	4, 5, 10
93-39	2
93-40	4
93-46	1, 5, 6, 9
93-47	1, 5, 6, 9
93-50	5, 10
93-53	4-6, 11
93-55	4
93-62	7
93-63	7, 8
93-66	7, 10
93-67	7, 10
93-71	3
93-73	7
94-2	2
94-10	7, 8, 11
94-11	3
94-14	1, 8
94-15	8, 11
94-24	2
94-25	8, 9
94-27	2, 3, 6
94-29	1
94-39	2

PCHB No.	
93-240	4

TABLE OF PERTINENT COURT CASES

1. Wilbour v. Gallagher, 77 Wn.2d 306 (1969)
2. Harris v. Hylebos Industries, Inc., 81 Wn.2d 770 (1973)
3. Merkel v. Port of Brownsville, 8 Wn.App. 844 (1973)
4. Department of Highways v. Washington Environmental Council, 82 Wn.2d 280 (1973)
5. Juanita Bay Valley Community Association v. Kirkland, 9 Wn.App. 59 (1973)
6. Eastlake Community Council v. Roanoke Associates, Inc., 82 Wn.2d 475 (1973)
7. Renton v. Scott Pacific Terminal, Inc., 9 Wn.App. 364 (1973)
8. Talbot v. Gray, 11 Wn.App. 807 (1974)
9. Department of Ecology v. Kirkland, 84 Wn.2d 25 (1974)
10. Leschi Improvement Council v. State Highway Commission, 84 Wn.2d 271 (1974)
11. Narrowsview Preservation Association v. Tacoma, 84 Wn.2d 416 (1974)
12. Department of Ecology v. Ballard Elks, 84 Wn.2d 551 (1974)
13. Putnam v. Carroll, 13 Wn.App. 201 (1975)
14. Hama Hama Company v. Shorelines Hearings Board, 85 Wn.2d 441 (1975)
15. Hayes v. Yount, 87 Wn.2d 280 (1976)
16. Swift v.Island County, 87 Wn.2d 348 (1976)
17. Bayley v. Kane, 16 Wn.App. 877 (1977)
18. Washington State Liquor Control Board v. Washington State Personnel Board, 88 Wn.2d 368 (1977)
19. Eickhoff v. Thurston County, 17 Wn.App. 774 (1977)
20. Pacific County v. Sherwood Pacific, Inc., 17 Wn.App. 790 (1977)
21. English Bay Enterprises, Ltd. v. Island County, 89 Wn.2d 16 (1977)
22. Sisley v. San Juan County, 89 Wn.2d 78 (1977)
23. Department of Ecology v. Pacesetter Construction Co., Inc., 89 Wn.2d 203 (1977)
24. Mentor v. Kitsap County, 22 Wn.App. 285 (1978)
25. Lassila v. Wenatchee, 89 Wn.2d 804 (1978)
26. Save v. Bothell, 89 Wn.2d 862, 576 P.2d 401 (1978).
27. Harvey v. Board of County Commissioners of San Juan County, 90 Wn.2d 473 (1978)
28. South Hill Sewer District v. Pierce County, 22 Wn.App. 738 (1979)
29. Weyerhaeuser v. King County, 91 Wn.2d 721 (1979)

TABLE OF PERTINENT COURT CASES

31. Portage Bay-Roanoke Park Community Council v. Shorelines Hearings Board, 92 Wn.2d 1 (1979)

31. Ritchie v. Markley, 23 Wn.App 569 (1979)

32. Department of Natural Resources v. Thurston County, 92 Wn.2d 656 (1979)

33. Skagit County v. Department of Ecology, 93 Wn.2d 742 (1980)

34. Tarabochia v. Gig Harbor, 28 Wn.App. 119 (1981)

35. San Juan County v. Department of Natural Resources, 28 Wn.App. 796 (1981)

36. Norco Construction, Inc. v. King County, 29 Wn.App. 179 (1981)

37. Nisqually Delta Association v. Dupont, 95 Wn.2d 563 (1981)

38. Hunt v. Anderson, 30 Wn.App. 437 (1981)

39. Save Lake Washington v. Frank, 641 F.2d 1330 (C.A.9, 1981)

40. Toandos Peninsula Association v. Jefferson County, 32 Wn.App. 473 (1982)

41. Kitsap County v. Department of Natural Resources, 99 Wn.2d 386 (1983)

42. Land Owners v. Department of Ecology, 38 Wn.App. 84 (1984)

43. Nisqually Delta Association v. Dupont, 103 Wn.2d 720 (1985)

44. Kates v. Seattle, 44 Wn.App. 754 (1986)

45. Caminiti v. Boyle, 107 Wn.2d 662 (1987)

46. Kitsap County v. Department of Natural Resources, 107 Wn.2d 801 (1987)

47. Clam Shacks of America, Inc., v. Skagit County, 109 Wn.2d 91 (1987)

48. Orion Corporation v. State, 103 Wn.2d 441, appeal after remand, 109 Wn.2d 621 (1987)

49. Friends of the Earth v. U.S. Navy, 841 F.2d 927 (C.A. 9, 1988)

50. Defense Fund v. METRO, 59 Wn. App. 613, 800 P.2d 387 (1990).

51. Eastlake Community Council v. City of Seattle, 64 Wash. App. 273, 823 P.2d 1132 (1992).

52. Canyon Conservancy v. Bosley, 118 Wash. 2d 801, 828 P.2d 549 (1992).

53. Bosley v. American Motorists, Inc. Co., 66 Wash. App. 698, 832 P.2d 1348 (1992).

54. Hedlund v. White, 67 Wn. App. 409, 836 P.2d 250 (1992).

55. Jefferson County v. Seattle Yacht Club, 73 Wn. App. 576 (1994).

56. City of Lake Forest Park v. Shorelines Hearings Board, 76 Wn. App. 212 P.2d (1994).

57. Erickson & Associates v. McLenan, 123 Wn.2d 864 (1994).

58. Buechel v. Department of Ecology, 125 Wn.2d 196, 884 P.2d 910 (1994).

CORRECTIONS

Please make the following corrections to your copy of the Fourth Edition of the *Washington State Shorelines Hearings Board Digest of Decisions*, Publication Number 94-167.

Pages 11, 16, 115, 128, 134

Change:
Houghtelling v. Mason County, et al., SHB No. 90-50

To:
Houghtelling v. Mason County, et al., SHB No. 92-50

Pages 50, 119, 129

Change:
Whatcom County Water District #10 and Sun Valley Community Association ..... SHB No. 92-41

To:
Whatcom County Water District #10 and Sudden Valley Community Association ..... SHB No. 92-41

Page 84, 3rd Paragraph

Correction of text in reference to:
Picton v. Pierce County and Department of Ecology, SHB No. 86-58

Change:
A sundeck on the Puget Sound side ..... It may not be approved as a conditional use.

To:
A sundeck on the Puget Sound side ..... It may not be approved as a variance.

Pages 86, 94, 114, 127

Change:
Erickson v. City of Redmond, SHB No. 86-61

To:
Erickson v. City of Raymond, SHB No. 86-61

Page 136

Change:
41. F.L.O.O.D. v. Department of Ecology, 38 Wn.App. 84 (1984)

To:
41. Land Owners v. Department of Ecology, 38 Wn.App. 84 (1984)

SHORELINES HEARINGS BOARD

PRIMARY MEMBERS

Past and Present

POLLUTION CONTROL HEARINGS BOARD
(Three Seats)

Matthew W. Hill
James T. Sheehy
Mary Ellen McCaffree
Walt Woodward
W. A. Gissberg
Chris Smith
Art Brown
Dave J. Mooney
David Akana
Nat W. Washington
Gayle Rothrock
Larry Faulk
Wick Dufford
Harold S. Zimmerman
Judith A. Bendor
Annette S. McGee
Robert V. Jensen
James A. Tupper, Jr.
Richard C. Kelley

ASSOCIATION OF WASHINGTON CITIES
(One Seat)

Robert F. Hintz
Robert S. Derrick
Dennis Derickson
Gordon Y. Ericksen
Rodney M. Kerslake
Dennis J. McLerran
Gordon Crandall
Jim Lynch
Mark Erickson

WASHINGTON STATE ASSOCIATION OF COUNTIES
(One Seat)

Robert E. Beaty
Delmon Anderson
Ray Card
Tracy J. Owen
James S. Williams
A.M. O'Meara
Richard A. O'Neal
Beryl Robison
Les Eldridge
Thomas R. Cowan
Paul Cyr

COMMISSIONER OF PUBLIC LANDS
(One Seat)

Bert L. Cole
Ralph A. Beswick
William A. Johnson
Gerald D. Probst
Arden A. Olson
Steve Tilley
Ronald J. Holtcamp
David W. Jamison
Brian Boyle
Nancy R. Burnett
Bobbi Krebs-McMullen