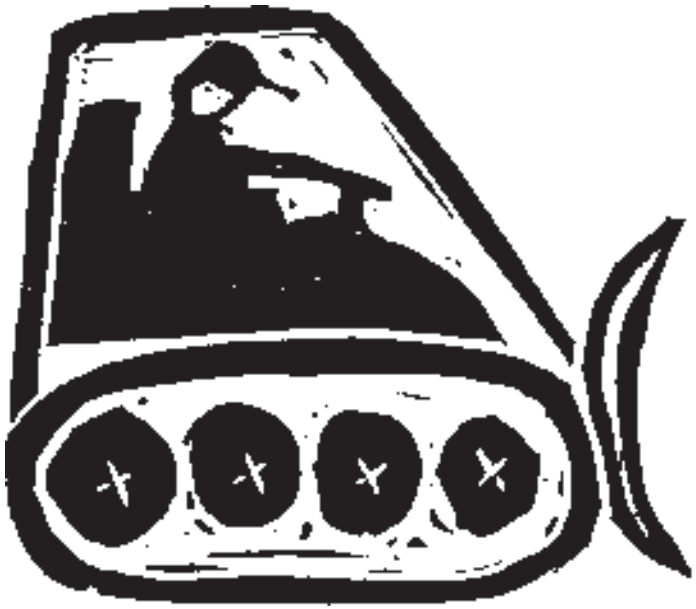

Wetland Protection Guide

A Citizen's Guide to Wetland Protection
Before and After
the Bulldozer Arrives

First Edition, 1995
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Views and recommendations in this report do not necessarily represent those of the funding agencies.

The Wetland Protection Guide

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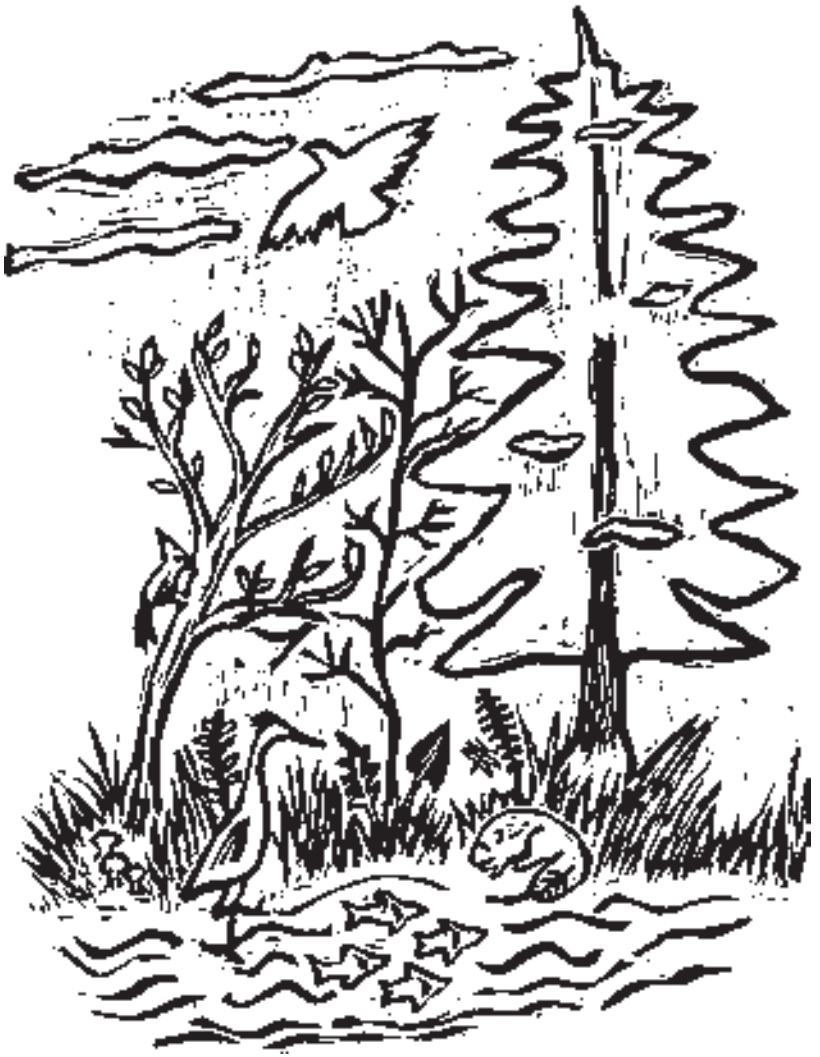
INTRODUCTION

Wetlands are an important contributor in preserving a healthy environment. Wetlands protect our water, minimize flooding and provide wildlife habitat. Congress and our Legislature have recognized the importance of wetlands and passed laws to protect them. These laws provide roles for regulators, developers, citizens and policy makers. This Guide is designed both as a road map and as a tool box for everyone interested in wetland protection. Also, we hope that the information and strategies presented here will promote long-term partnerships between citizens, developers and local governments. This Guide can help each player solve existing problems and prevent future problems.

Our laws and regulations provide the framework to preserve the integrity of our remaining wetland resources. The Guide explains how to work with existing laws and regulations applicable in Washington state. Our primary focus is the local level. Land use change is site specific and that site is where you live, the neighborhood and the local jurisdiction.

Land use scenarios or games are played out in cities and



counties across the state every day. Sometimes, as a citizen, you watch and sometimes you play and the outcome always matters. The goal is for everyone to win. In this way, we can maintain the quality of life for which our state is renowned.

CHAPTER ONE presents the basic facts about wetlands: what they are, how they work and how to identify them. This is critical information for all players to understand.

CHAPTER TWO describes the mesh of laws and regulations that can be used to protect wetlands. There are federal, state, and local laws that apply in various combinations in a variety of different situations. This Guide will describe each of the most important laws and how they are applied. This chapter includes the changes passed in 1995 as part of Washington state regulatory reform.

CHAPTER THREE identifies the players and the role of each in the land use process. It is important to understand who each of the players is in the wetland protection game. They are all potential allies in the community effort to preserve our quality of life.

CHAPTER FOUR is the heart of the Guide. It presents the strategies and tools needed to be an effective player in the wetland protection process. The strategies are designed to be used by individuals or groups of citizens. However, the Guide will also help developers and government administrators understand citizens' roles in wetland protection so that cooperative partnerships can be formed. This chapter includes six citizen action strategies:

- ✓ Get to Know Your Wetland and Your Watershed
- ✓ Learn About Local Laws and Regulations
- ✓ Find Out Early About Proposed Developments
- ✓ Get Involved in Wetland Protection at the Project Level
- ✓ Monitor Environmental Review of Projects that Impact Wetlands
- ✓ Influence Policy By Participating in the Planning Process

CHAPTER FOUR discusses how to handle emergency situations is covered in.

In some respects the Guide is a book of lists and questions. If you don't ask the right questions, you won't get the right answers. In every jurisidiction the answers are unique, but the questions are not. Appendices include explanations of regulatory permits, a glossary, where to find the information you need including the Internet and a selected bibliography. All contain invaluable information that will help you to be a successful player in the wetland protection game.

CHAPTER ONE

WETLANDS 101: Wetlands Made Simple

You may already be asking the most fundamental question in wetland protection: "What is a wetland?" This chapter will answer this question first and then cover another frequently asked question: "Why protect them?" The answers have a lot to do with common sense. We hope that you agree.

THE BASICS OF WETLAND DEFINITION

Biologically, to have a wetland, you must have three key conditions:

1. **Presence of water -** *hydrology,*
2. **Special soils -** *hydric soils, and*
3. **Water tolerant plants –** *hydrophytic vegetation.*

Wetlands are transitional lands between water and higher and drier uplands. Wetlands range from pretty darn wet to what you might say are pretty darn dry. What makes a "drier looking" wetland a wetland? The answer is the presence of water in the soil for a long enough period of time during the growing season to influence soil chemistry and vegetation. It's not enough just to have water there some of the time. The water has to be present long enough and occur frequently enough, once a year, to create hydric soils and long enough for hydrophytic vegetation to become established. So wetlands are a combination of water and special soils and are dominated by specially adapted plants.

Hydrology

The most important factor in the formation of wetlands is water. Water comes from precipitation, ground water, surface water flow and, in some cases, tides. Where water collects in low spots, wetlands are created. Wetlands are like retail stores - location is everything. Water may be present only for several weeks during the growing season. Even though an area appears dry, particularly during the summer months, it can still be a wetland.

Soils

Wetland biologists need to sample the soils to be sure a location is a wetland. Depletion of oxygen due to the presence of water changes the characteristics and appearance of the soil. The longer the water is there, the more pronounced the changes become. Wetland scientists use a Munsell chart to identify the low chroma colors, that is very dark colors, that result from lack of oxygen in the soil. Oxygen depletion occurs very quickly; perhaps in as little as 10 to 21 days. Organic soils, like the soil for your garden, are very dark brown or black. Mineral soils, when deprived of oxygen, tend to become increasingly blue-grey. The Department of Agriculture's Natural Resource Conservation Service has soil maps that identify hydric soils. These maps are not always accurate for a particular site, but they are a good place to begin.

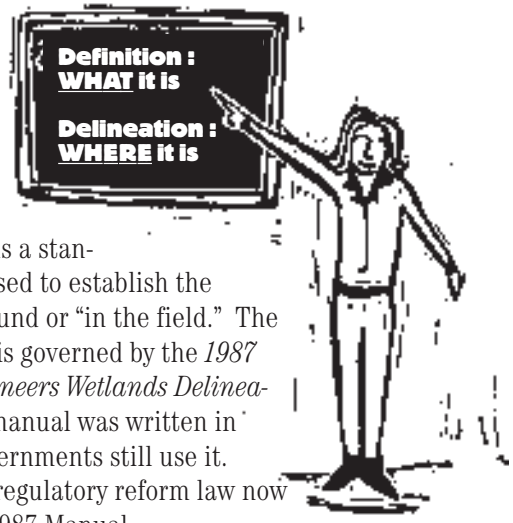
Plants

The amount of water and the depth of saturation of the soil throughout the season influence the plants that grow in wetlands. Some plants can tolerate lots of water and even thrive when they are partially inundated during some seasons of the year. Other plants will die, or do very poorly, under wet conditions because their physiology is not adapted to wet conditions. Biologists have compiled a list of plants that occur in wetlands and classified these plants by the percentage of time that they are found in wet soils. You can get a copy of this list by contacting the Environmental Protection Agency (EPA) in your region. Ask for the Wetland Plant List.

There are many different kinds of wetlands. However, there are common elements you can look for to help determine whether an area in your neighborhood is a wetland and to establish what kind of wetland it is. Instructions for the lay person about how to identify a wetland are contained in *A Field Guide to Wetland Characterization: A Non-Technical Approach* published by Washington State University Cooperative Extension.

DEFINITION VERSUS DELINEATION

There is an important difference between a wetland definition ("what it is") and a wetland delineation ("where it is"). The definition establishes the characteristics required to determine the presence of a wetland. Delineation is a standardized methodology used to establish the wetland edge on the ground or "in the field." The delineation of wetlands is governed by the *1987 U.S. Army Corps of Engineers Wetlands Delineation Manual.* Another manual was written in 1989 and some local governments still use it. However, the new state regulatory reform law now requires the use of the 1987 Manual.



BEYOND THE EDGE: THE WATERSHED

Remember to look beyond your wetland edge to how your wetland works in the watershed. A watershed is a land area which

surrounds and drains rain and snowmelt into a common body of water, a stream, river, lake or the Puget Sound. Is it near the beginning (headwaters) of the watershed? Is it directly connected to other wetlands or streams? Is it toward the lower end (outlet) of the watershed? Your Planning Department may have maps of watersheds within its jurisdiction that can help you determine the landscape perspective. The state and the federal government have watershed protection programs and have identified watersheds at great risk. In addition, many watersheds have planning efforts underway. There are coordinated groups that are working together throughout the state because as the saying goes—"we all live downstream."

WETLANDS IN WASHINGTON STATE

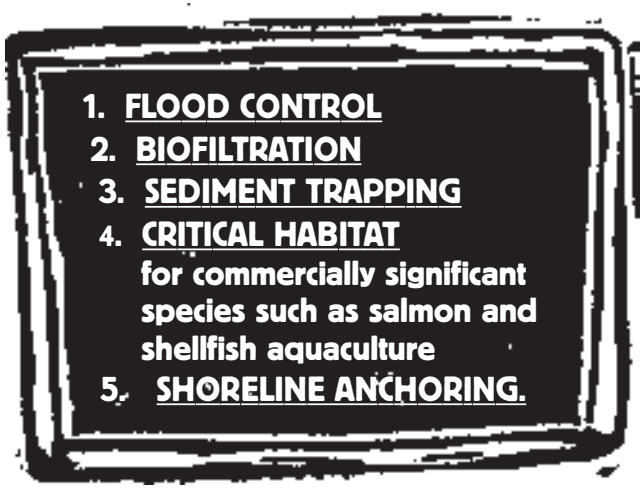
Washington state, particularly western Washington, has a lot of rain during the winter and early spring. Almost every summer there is a drought. This weather pattern has a profound impact on the types of wetlands found in Washington. Bogs, tidal marshes, forested wetlands and farmed wetlands can all be found here. Farmed wetlands and forested wetlands tend to dry out in the summer, but perform valuable habitat functions during the winter months.

Wetlands are disappearing fast in Washington state. The best information available indicates that there are currently about 938,000 acres of wetlands in Washington (U.S. Fish and Wildlife Service, 1989). Estimates of pre-colonial acreage vary but indicate that 33% to 50% of Washington's historical wetland resource has been lost. Local areas have suffered much higher losses. For example, 70% of the tidally influenced emergent wetlands in the Puget Sound have been lost due to diking, dredging and filling activities (Canning and Stevens, 1989). Urbanized wetlands in the Puget Sound have suffered losses ranging from 90 to 98% (Bortelson et al., 1980). Other startling numbers are provided by the U.S. Geological Survey of historical wetland acreage in 11 Puget Sound estuaries. This study estimates that 100% of Puyallup River wetlands, 99% of Duwamish River wetlands and 96% of Samish River wetlands have been lost (Bortelson et al., 1980). Besides absolute loss, many more acres are degraded. In fact, most of our existing wetlands have been compromised in some way and their functions reduced (Canning and Stevens, 1989).

WHY ARE WETLANDS VALUABLE?

Wetlands are valuable for many reasons, some of which are economic such as flood control. Others are more intangible, quality of life values such as appreciation of scenic beauty and activities like bird watching and sport fishing.

Wetland functions are physical and natural processes necessary for the self-maintenance of the ecosystem. Wetlands act as nature's sponge because they soak up flood waters. They also filter and purify water, often removing sediments and heavy metals from



runoff. This biofiltration improves water quality, which in turn affects public health, welfare and safety. Sediment trapping also improves water quality by filtering particles from the water column. Economically, it's cheaper to let wetlands in their natural state purify water rather than to try to recreate this function through engineering. As critical wildlife habitat, two-thirds of commercially important fish and shellfish species are dependent on estuarine wetlands for food, spawning and/or nursery areas. In shoreline areas, wetlands anchor the shoreline and keep it from eroding away. The Selected Bibliography cites a number of studies on the eco-

nomic benefits of wetlands.

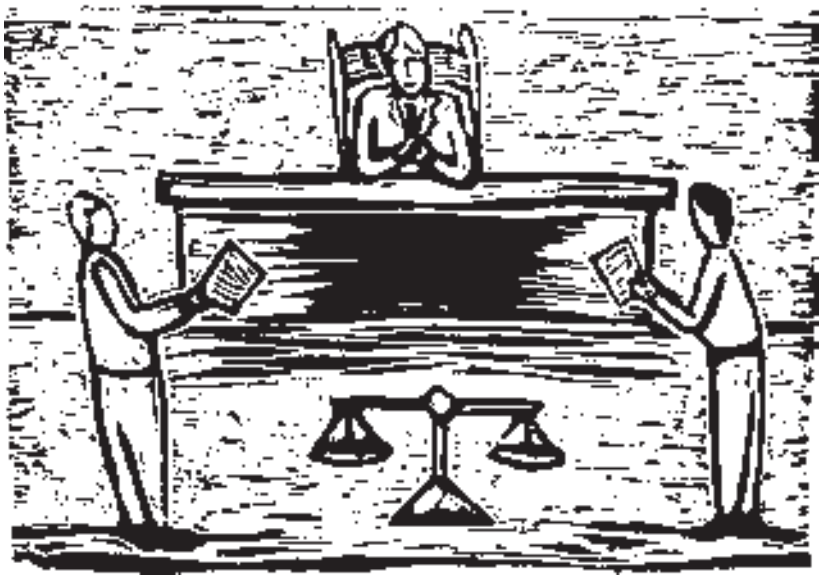
Functions vary from site to site. All wetlands have carrying capacities and threshold levels. If stressed beyond these levels, wetlands can cease to provide their valuable functions. For example, take the function of sediment trapping. If a wetland is located next to a construction site that does not use sediment control devices (such as silt fencing or properly staked hay bales), wetland vegetation can easily become smothered by sediments that overwhelm its natural filtering ability. Heavy sedimentation destroys many wetlands and often leads to downstream impacts. Think of your morning coffee, have you ever poured too much water into the filter? Well the same thing happens with wetlands. If the coffee filter is too full, your hot steaming coffee pours down over the sides and mucks up your counter. With wetlands, the mud just flows through and around the wetland once its filtering capacity has been overwhelmed. Instead of mucking up a counter, it can muck up salmon streams and suffocate salmon eggs.

SUMMARY

Wetlands have three characteristics. They are wet at some time of the year. Water depletes oxygen from the soil and favors growth of special wetland plants. These elements are reflected in the wetland definition used in Washington state. For this definition, refer to Chapter 2. These conditions create unique ecosystems that protect our quality of life. Wetlands absorb flood waters, serve as nursery areas for fish and shellfish and provide habitat for birds and wildlife. Wetlands also purify our water free of charge. It is clear that this rapidly vanishing resource is of great economic value, not too mention the fact that wetlands are necessary for public health and safety. No wonder federal, state and local governments have passed laws to protect them.

CHAPTER TWO

THE LEGAL FRAMEWORK: The Playing Field



Washington state has three primary laws that local governments use to regulate wetlands in their jurisdiction:

1. **THE STATE ENVIRONMENTAL POLICY ACT OF 1971 (SEPA)**
2. **THE SHORELINE MANAGEMENT ACT OF 1971 (SMA)**
3. **THE GROWTH MANAGEMENT ACT OF 1990 (GMA)**

These three laws serve as the legal framework for wetland protection in Washington even though none of the three was specifically created to protect wetlands. However, these laws, and the local plans and regulations that derive from them, do, in fact, provide a

legal framework for wetland protection. In addition, certain federal laws such as the Clean Water Act are applied in Washington to protect wetlands.

STATE ENVIRONMENTAL POLICY ACT (RCW 43.21C)

The State Environmental Policy Act (SEPA) is Washington State's most fundamental environmental law. By passing this law, the Legislature recognized how dependent we are on the environment and how certain human activities can cause irreparable harm to it. SEPA commits all state and local governments to maintain environmental integrity. Although it does not impose specific requirements to avoid specific types of environmental degradation, SEPA does require state and local officials to consider the environmental consequences of their decisions and to act to avoid or otherwise mitigate harm to the environment.

Virtually every decision made by governments other than minor construction or non-environmental (e.g., personnel and social services) decisions is subject to SEPA review including:

- Adoption of proposed legislation such as a comprehensive plan or zoning ordinance;
- Initiation of government programs and projects such as whether or not to build a park; and
- Government regulatory decisions on permits for private development, including: rezoning, subdivision approvals, building permits, and Shoreline Management Act substantial development permits.

SEPA imposes direct requirements on government decision-making. However, private developers bear a large portion of the responsibility for SEPA compliance when they seek permits. The developer or project proponent must complete the SEPA Environmental Checklist and frequently is required to provide special studies to determine specific probable impacts as well as complying with mitigation requirements. The studies and mitigation under SEPA should combine with (not duplicate) other requirements including those in development regulations, such as critical areas ordinances.

In addition to requiring specific procedures when making a decision, SEPA also gives government agencies substantive authority to apply environmental protection criteria to all its decisions. This means that a government can deny or condition permits, such as building permits or subdivision permits, based on environmental factors including wetland degradation or loss (Settle, 1983).

Each government agency has its own SEPA ordinance based on State law, but tailored to local conditions. Some ordinances are stricter than others. This results in variable thresholds of environmental review from jurisdiction to jurisdiction. For example, some jurisdictions exempt developments of up to 20 units from SEPA review, whereas others may exempt as few as only one.

The Planning Department of the jurisdiction, either the city or the county, usually is responsible for administering SEPA. The SEPA administrator, an individual designated by the local SEPA ordinance, reviews a proposal's environmental impact and the adequacy of proposed mitigation measures, usually with public review. He or she then makes one of three decisions, called "threshold determinations," when determining if, and how, SEPA applies to a proposed project:

1. **DNS:** *a determination of non-significance, which means that the proposal will not have substantial environmental impact and that no further environmental review or mitigation is needed;*
2. **MDNS:** *a mitigated determination of non-significance, meaning that if the developer agrees to certain measures to mitigate for environmental impact, such as fencing of a wetland buffer, the project will have no significant environmental impacts and no Environmental Impact Statement (EIS) is required; or*
3. **DS:** *a determination of significance, meaning that the project is likely to have significant environmental impact and the developer is required to write an EIS.*

The administrator bases the threshold determination on his or her independent evaluation of an Environmental Checklist filled out by the developer or the project proponent. The administrator also determines whether the jurisdiction's comprehensive plan and development regulations have actually already addressed the

"specific environmental impact" of the project. If so, then these existing plans and regulations can provide environmental analysis and mitigation measures for project actions without a need for an EIS or additional project mitigation. The primary role of environmental review is to focus on gaps and overlaps that may exist in applicable laws and requirements related to the proposed action.

The threshold determination and Environmental Checklist are public documents. You can ask to see them at any time. If you do not agree with the decision or do not believe that the SEPA checklist was filled out accurately, you can appeal the threshold determination.

If an EIS is required, the developer will prepare a Scoping Notice for the proposed project. The Scoping Notice identifies environmental issues that are proposed to be addressed in the EIS. The public can and should comment on the proposed scope of the EIS.

The State has taken steps recently to integrate environmental review under SEPA with overall project review. This includes integrating the public participation process. As a result, there is only one "open record hearing" and one "closed record appeal" under SEPA. Other chances to provide input can be public meetings, which are not mandated by law, and written comments after the Notice of Application is published by the jurisdiction. The local administrative appeal period is a uniform 14 days. The local government has a choice of when to have the open record hearing. It can be used to make the permit decision or to hear a local appeal on the permit decision. There is no more than one hearing to create an "official record" for local decisions and any judicial appeals.

THE SHORELINE MANAGEMENT ACT (RCW 90.58)

The Shoreline Management Act (SMA) is a State law requiring local jurisdictions to create a Shoreline Master Program (SMP). The purpose of the SMP is to regulate development within sensitive shoreline areas. Shorelines, according to the SMA, include all areas typically within 200 feet inland from principal bodies of water (rivers, streams, lakes, tidal areas) and associated wetlands. The local SMP, or Master Program, must provide at least minimal standards of protection for shoreline areas. The final program is subject to approval by the state.

Typically, SMPs designate land uses for different areas of the shoreline. These use designations can add to or replace the jurisdiction's existing zoning. Except for certain emergency and/or minor construction that are not within the SMA's definitions of "substantial development," all development in shoreline are as except uses such as single family homes are required to obtain a substantial development permit from the local jurisdiction. In addition to public involvement opportunities provided by the SMA in the review of this permit, SEPA is also required. This affords yet another opportunity for public input. The Growth Management Act (GMA) requires "critical areas ordinances" for wetlands throughout the state. SMA addresses only shoreline wetlands.

In county planning under the Growth Management Act, the Shoreline Master Program must be integrated into the comprehensive plan, and appeals on Shoreline Master Programs rather than shoreline permits are heard by the Growth Management Hearings Boards.

Shoreline permits remain appealable (for 21 days) to the State Shoreline Hearings Board, and conforms with the SEPA Notice of Action and local permit appeal deadlines. The Shoreline Hearings Board is required to decide on an appeal within 180 days.

GROWTH MANAGEMENT ACT (GMA)

The 1990 the Growth Management Act (GMA) for the first time created a detailed growth management scheme for the state of Washington. GMA requires most counties and cities to produce a comprehensive plan. Each plan must address land use, transportation, public facilities, utilities, housing, and other issues.

The first step under GMA is to designate critical areas and protect them with a Critical Areas Ordinance (CAO). The process starts here in order to protect our most environmentally sensitive areas. Some jurisdictions still are trying to finish this first step. Next, jurisdictions must adopt growth policies, comprehensive plans and finally complete development regulations.

GMA "critical areas" include wetlands. All critical areas must be designated, and each local government must decide how to protect these areas. Other critical areas specifically listed are: steep slopes ("geologically hazardous areas"), frequently flooded areas,

aquifer recharge areas, and fish and wildlife habitat conservation areas. The statute reads "including, but not limited to" when referring to critical areas. Any local jurisdiction can be more protective of special areas within its jurisdiction, such as culturally significant areas or unique ecosystems. In addition, GMA development regulations include stormwater standards (also implementing the federal Clean Water Act), which protect water quality in wetlands.

GMA requires that local governments adopt regulations that are guided by the "best available science" to protect wetlands and other critical areas. What is "best available science?" Science does not always provide exact answers. However, scientific studies often recommend ranges to be applied according to circumstances. Also, minimal levels of protection can be identified. For example, according to the Departments of Ecology and Fish and Wildlife, a high quality wetland with significant habitat value should have a 200- to 600-foot buffer.

Under GMA, the specifics of "how to protect" are left up to the local government; each jurisdiction has developed its own critical areas ordinance. Some ordinances do not provide adequate protection for wetlands or other areas and have been legally challenged as a result. Growth Management Hearings Board decisions on these appeals establish that the values and functions of the wetland must be maintained and that the Act's mandate for protection requires either a buffer or a functionally equivalent protection for all wetlands.

GMA Wetland definition

The GMA definition of "wetland" was changed in the 1995 Legislature to be consistent with the federal definition. The new definition reads as follows:

"Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands."

Comprehensive Plan Amendment Process or "Docketing"

Under GMA, comprehensive plans may be amended once a year. The plan amendment process is a great opportunity for citizen input. It provides a chance to submit proposed changes to the plan at any time and have them considered at least once a year. This process is called the "docketing" of plan amendments; it is intended to remedy deficiencies in the comprehensive plan or development regulations that are discovered during the review of individual projects. A 'deficiency' is defined as an absence of required or desirable content in these documents, not whether development regulation addresses a site-specific adverse environmental impact that could be mitigated.

Higher Scientific Standard for Critical Areas Protection

A higher scientific standard is contained in RCW 36.70A.172. It reads:

"In designating and protecting critical areas under this chapter, counties and cites shall include the best available science in developing policies and development regulations to protect the function and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measure necessary to preserve or enhance anandromous fisheries."

The legislature has not define "best available science," nor how jurisdictions should use best available science. The Washington State Court of Appeals has ruled that science must be included in the record and must be applied substantively in the development of critical area polices and regulations. This decision gave local government the authority to balance scientific evidence with other goals of GMA.

The Department of Community, Trade and Economic Development is in the process of developing a rule that will help local jurisdictions to identify and include the 'best available science' in developing their policies and development regulations to protect the functions and values of critical areas per RCW 36.70A.172. The Department expects to adopt the rule in 2000.

Public Participation Program

Each jurisdiction must develop a Public Participation Plan and notify the public of the opportunity to amend the comprehensive plan and the development regulations. This plan is to be incorporated into the development regulations. The plan and procedures must provide for:

- ✔broad dissemination of proposals and alternatives,
- ✔opportunity for written comments,
- ✔public meetings after effective notice,
- ✔provision for open discussion,
- ✔communication programs,
- ✔information services, and
- ✔consideration and response to public comments.

The Public Participation Plan should be completed before the comprehensive plan or development regulations of the jurisdictions are amended.

SEPA Amendment

Section 201 of ESHB 1724 creates a new section of SEPA. The purpose is to streamline project review and to use already existing environmental analysis whenever possible. The provision applies *only if* comprehensive plans and development regulations have actually addressed "specific environmental impacts." Therefore, existing plans and regulations can provide environmental analysis and mitigation measures for project actions without the need for an environmental impact statement or further project mitigation.

Specifically, the primary role of environmental review is to focus on gaps and overlaps that may exist in applicable laws and requirements related to the proposed action. The environmental review process is not to be used for land use planning. Project review decisions are to start with previous plan decisions.

Integration of SMA

Section 104 of ESHB 1724 requires that the Shoreline Master Program be considered part of the comprehensive plan and that all appeals on Shoreline Master Programs, not shoreline permits, be heard by the Growth Management Hearings Boards. Also, there is now a 90-day process to amend the Shoreline Master Program.

Shoreline permits will most probably be made uniform with zoning and subdivision public notices. Shoreline permits remain appealable to the State Shoreline Hearings Board. The appeal period is reduced from 30 to 21 days and now conforms with the SEPA Notice of Action and local permit appeal deadlines. The Shoreline Hearings Board is required to decide an appeal in 180 days.

Streamlining the Permit Process

Under ESHB 1724 requirements, environmental review and project review are integrated into one process. It is assumed that some or all of a project's potential environmental impacts will already have been avoided or otherwise mitigated. No additional studies are required "where existing regulations have adequately addressed a proposed project's probable specific adverse environmental impacts (Sections 202 and 403)."

The law further indicates that the legislature intends the consistency determination between a project and applicable regulations and plans will be "largely a matter of checking compliance with existing requirements for most projects, which are simple or routine, while more complex projects may require analysis."

Three issues are considered settled by the comprehensive plan and cannot be revisited, as explained earlier, in the project review process:

- The type of land use,
- Residential density within an urban growth area, and
- Public facilities available or that will be funded.

A new Environmental Review Checklist is mandated. State government is directed to work with local government and the public to develop a better format than the current one that incorporates SEPA, GMA and SMA.

Public participation is limited. There is is only one "open record hearing" and one "closed record appeal" under SEPA. Other chances to provide input can be public meetings, which are not mandated by law, and written comments after the Notice of Application is published by the jurisdiction. The local administrative appeal period is a uniform 14 days. The local government has a choice of when to have the open record hearing. It can be used to make the permit decision or to hear a local appeal on the permit decision. There is not more

than one hearing to create the "official record" for local decisions and any judicial appeals.

FEDERAL LAWS

Section 404 and 401 of the Clean Water Act may be applicable to a project action under consideration. The purpose of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." Section 404 applies particularly to regulating discharge of dredged or fill material into wetlands. The U.S. Army Corps of Engineers Corps is primarily responsible for issuing Section 404 permits. The Environmental Protection Agency has oversight authority and issues review guidelines.

Section 401 allows states to protect their water quality using a certification process. An extensive discussion of both sections is contained in the Wetland Regulations Guidebook recently revised by the Department of Ecology.

Federal law may affect any project action located near wetlands or streams that are critical habitat for salmon listed as "threatened" under the Endangered Species Act. Once a final listing is made under the Act, all federal agencies must ensure that project actions are not likely to jeopardize the continued existence of a listed species, nor adversely modify its critical habitat. Local jurisdictions and private entities can enter into voluntary agreements with the federal government that provide protections to a listed species and that allow incidental take of the species. Citizens can file suit to require the federal government to properly enforce the Act.

The Rivers and Harbors Act was passed into law in 1899. Section 10 gives the Corps the authority to regulate all activities that may obstruct a navigable water of the United States including construction of docks and filling or dredging. A navigable water is virtually any body of water on which a boat — canoe to freighter — can navigate between states or nations. These waters include lakes that cross state lines or that are connected to the sea by locks, rivers and large streams, and all waters subject to tidal action. As long as an area is subject to inundation at the ordinary high-water mark of a lake or tidal water body, it is subject to Section 10. Therefore, many wetlands and marshes are regulated by the Rivers and Harbors Act.

TWO PLAYING FIELDS

The first playing field is controlled by all the requirements of GMA, including all the mandated elements of the comprehensive plan (SEPA and SMA). Twenty-nine counties and 208 cities fall into this category. The second playing field comprise counties and cities not planning under GMA. In these jurisdictions, SEPA and SMA along with the GMA-mandated Critical Areas Ordinance, if completed, provide the primary legal framework for land use action. This group includes at least seven counties and hundreds of cities.

SUMMARY

The legal framework or the playing field consists of the laws, plans and regulations that control land use decisions. The passage of GMA, for the first time, gave comprehensive planning legal status and required that a jurisdiction's growth policies and comprehensive plans have the force of law. Before 1990, plans were adopted but carried little weight.

In jurisdictions planning under GMA, the legal framework consists of:

✔Growth management policies

✔Comprehensive Plan and its required elements – land use, housing, capital facilities, utilities, rural areas (for counties), transportation, and Shoreline Master Program. An Environmental Element is optional.

✔Development regulations, including the Critical Areas Ordinance and local SEPA policies

✔Environmental reviews of the above documents

✔Zoning Code

✔Federal laws

In jurisdictions not planning under GMA, the legal framework or playing field for environmental protection relies on Critical Areas Ordinances, the local SEPA policies, and federal laws.

CHAPTER THREE

THE PLAYERS: Points of view

The land use development process is a game of sorts. Ideally, it is a game where the objective is to have as many winners as possible. This chapter discusses the players in the land development process, what their points of view might be and ways of working successfully with them.

Whenever you are working with land use issues, you will likely work with the following players:

- Citizen/neighborhood groups
- Project proponents (applicant, developer)
- Local planners
- Wetland biologists (or other technical experts)
- Hearings examiners
- City or county officials
- State and federal agency staff

Each of these participants plays a role in making land use

decisions that affect wetlands, and each can be an ally in wetland protection. The professionals involved in wetland protection and land development are people just like you. There are effective and ineffective regulators, and the same is true of wetland biologists, developers, politicians, and citizens. The best results occur when you assume the best: that the planner cares about your wetland, that the developer wishes to comply with wetland regulations, and that the biologist is doing his or her best professional work. Everyone makes mistakes, so allow for mistakes and treat all the players as you would wish to be treated.

NEIGHBORHOOD GROUPS

In reality much of the land use process and the project approval process is citizen-driven. Citizens are active in the development of land use policies and the Comprehensive Plan. The State Environmental Policy Act (SEPA) is designed to ensure that citizens can participate in all aspects of the land use decision-making process. Remember, as a citizen or citizens' group, you are legitimate players even though at times you may feel like an outsider.

Before you get involved in a project, figure out what your goals are. Do you want to stop the project? Do you want to modify a project? Do you intend to work with the Planning Department on other issues or only on this one? Many people get involved in a project that directly affects them. It is a good idea to look for other citizens or groups that share your concerns. You can find them by contacting the relevant city/county planning department or environmental groups, such as WETNET and Streamkeepers or other neighborhood groups. Of course, you can start a group if one does not already exist.

The most effective citizen activists track specific issues, but are also involved in policy development. The 1995 legislative changes make upfront involvement in the policy process almost a necessity. Activism can be both exhausting and exhilarating, but it requires persistence and tenacity. Always reach out for allies and others to work with you. The details about how to participate effectively are outlined in Chapter 4.

DEVELOPERS OR PROJECT PROPONENTS

The developer or applicant proposes the project or action (let's say a subdivision) that requires one or several permits from local government. Applicants vary as much as the projects they propose; some have lots of experience with the jurisdiction and its processes; some have none at all. What all applicants have in common is that they are trying to get something done, preferably as quickly as possible. As the saying goes, "time is money." Applicants generally hire professional consultants for technical information, such as traffic studies or wetland reports.

One way to learn about a developer is by looking at what they've done in the past. Experienced developers have a record that you can check. A place to start is the Planning Department where you can ask about previous projects in your jurisidiction. You can go and take a look at them and ask the neighbors about their experience. Some developers who have worked in the public arena are

comfortable going to neighborhood meetings to explain their projects. Try to talk with the developer first, if possible. Does the developer tend to specialize in one type of project? Do they have an established record with the city or county? Again, your local planner may be helpful in providing you this information, if you can't get it directly from the developer.

Traditionally, developers meet with local government and agency staff before submitting project plans to get an idea of what to expect. These meetings are called "pre-application" or "pre-submission" meetings. Many developers have found that involving the public in the process at the beginning saves time in the long run.

LOCAL PLANNERS

Local planners process development applications to determine if they conform to local comprehensive plans and policies as well as all applicable regulations. Local planners have general knowledge about a wide variety of topics that affect development (e.g., traffic, noise, stormwater runoff, air quality, platting and subdivision laws, ordinance interpretation) and may specialize in one or more of these areas. They may or may not know much about wetlands. Typically, in larger jurisdictions, planners can contact a wetland biologist to help determine specifics about the wetland in question. All planners who work in current (as opposed to long range) planning positions know something about wetlands because they administer the Critical Areas Ordinance (CAO).

Wetlands are usually a very small part of a planner's world. But often the planner can provide you with specific information on wetlands in your jurisdiction and maybe even on the wetland in your neighborhood. Your planner can give you a copy of your jurisdiction's CAO and explain it to you. The planner can also give you a copy of the wetland inventory for your area (if one exists) and tell you whether the wetland you're interested in is protected.

WETLAND BIOLOGISTS

Because wetland science is a relatively new field (the most widely used delineation methodology was established in 1987 by the federal government), wetland biologists often have a wide variety of

experience in the natural sciences. Even when the same methodology is used to determine the extent of wetlands on a site, wetland biologists can (and do) differ in their opinions. Developers may hire wetland biologists who successfully argue for reduced buffers. In some cases, biologists may even argue for elimination of certain wetlands in exchange for creation of wetlands in other areas. Many jurisdictions have wetland biologists on retainer. Ask to see their statement of qualifications.

Wetland biologists are qualified to identify and delineate a wetland boundary. Many have other specialized skills and can do wildlife surveys and other studies. These specialists can also evaluate reports and mitigation plans.

Like developers, wetland biologists have track records and reputations. Find out what kind of work the biologist has done in the past. Call the biologist directly. The more information you have on all of the players, the better off you will be. Many jurisdictions have "consultant lists." Anyone on these lists is deemed by the local government to be qualified to perform wetland studies. Ask your local planner for the wetland consultant list.

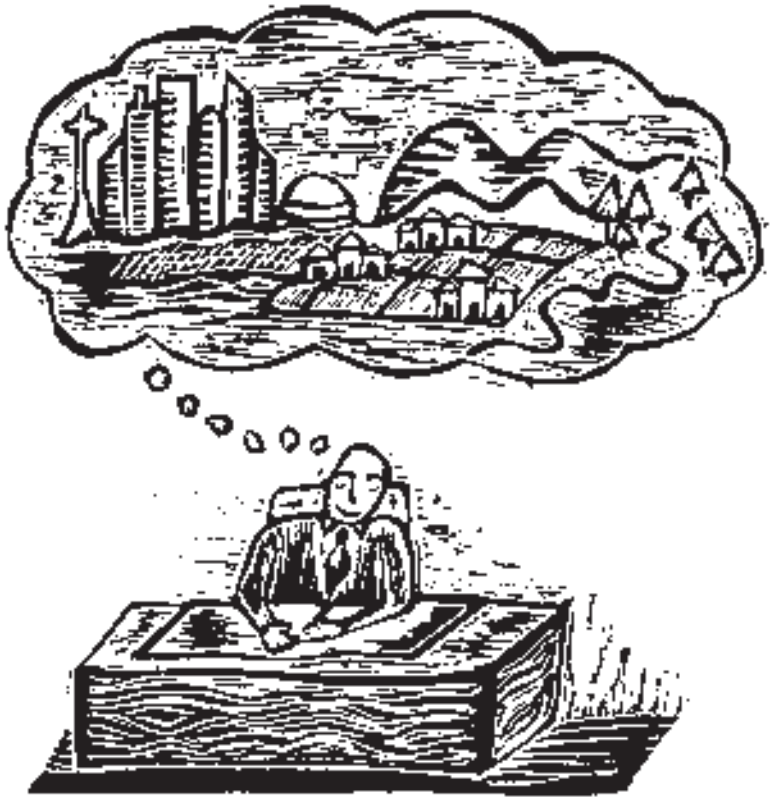
HEARINGS EXAMINERS

Just as this name implies, this person presides over public hearings as an objective interpreter of whether the proposed project complies with all applicable regulations. However, the hearings examiner has no authority to enforce state regulations, only regulations adopted by the local jurisdiction. Just like everyone else, there are good hearings examiners and bad ones. A hearings examiner is not a judge, though he or she serves a similar role. Typically, they are attorneys specializing in land use. Hearings examiners make decisions based on staff recommendations, public testimony, and their reading of local policies and codes. If they agree that the project is consistent with the regulations, then the permit is issued. In some cases, the approval is subject to conditions.

ELECTED OFFICIALS

Elected officials include City or County Council Members, County Commissioners and Mayors. The politics of local planning is often complex and changes with nearly every election. The current incumbents are in the telephone directory, or you can call City Hall or the County Administration Building for a current list. Councils or Commissions must approve many of the major permits. Their staff, which includes planners, makes recommendations.

Most elected officials make an effort to be responsive to their constituents. If there is a wetland issue of concern in your neighborhood let your elected official know about the situation. Most elected officials are not wetland experts. Many are openly hostile to wetlands and environmental protection. It is your job to educate them about the value of wetlands, and why it is important that they be preserved. This may involve public testimony at hearings or leading a field trip to a local wetland. It can be as simple as making a phone call or writing a letter. Elected officials often try to balance interests. Planners may be under pressure to issue certain permits



because an elected official favors the project. It is certain that if elected officials hear only from one interest, they will focus on responding to that interest. Use your elected officials as your representatives. After all, that's what they're there for.

STATE AND FEDERAL AGENCY STAFF

Finally, you may have an opportunity or a need to contact state and federal agency staff. The federal government, through the Army Corps of Engineers, regulates the placement of fill in wetlands and other waters of the United States, through its permit program. Individual permits are required for fill amounts greater than certain thresholds for specific activities. The Corps issues Nationwide Permits (NWPs) for activities that will have minimal impacts on wetlands. Notification for any activity in waters of the US, including wetlands, should be provided to the Army Corps. The Corps then can determine whether an individual permit is required, or a Nationwide Permit can be used. Notification is required for fills greater than 1/4 acre in extent, although up to 2 acres of wetland fill may be authorized under some Nationwide Permits. NWPs do not require public notice. The EPA can ask for a Nationwide Permit to be elevated to an individual permit, which would be subject to public review, if the EPA can show that the impact from this project is substantial. The District Engineer has discretionary power to elevate a nationwide permit to an individual permit, but is not required to do so. The EPA has power of veto over individual permits, but not nationwide permits, although the EPA rarely exercises this power. In making a permit decision, the Corps is required to coordinate with EPA, US Fish and Wildlife Service, the Natural Resource Conservation Service, and other parties of interest, including agencies, tribes, and local governments. The National Marine Fisheries Service is the lead federal agency for wetland impact to critical habitat of salmon species listed under the Endangered Species Act (ESA). The US Fish and Wildlife Service is the lead federal agency for the bull trout listed under the ESA.

At the State level, the Department of Ecology is required to issue a Section 401 Water Quality Certification, which establishes that the project impacts will meet State Water Quality Standards. Additionally, the Department of Fish and Wildlife is responsible for the Hydraulic Project Approval (HPA) permit issuance. These latter permits are required for any "in-water work" in the State.

Staff at these state and federal agencies may be helpful to you because they are knowledgeable about the process and they work hard to protect the environment within legal restrictions. These people can be powerful allies. From them, you can gain information about the legal process and about wetland protection requirements.

SUMMARY

This chapter discusses seven potential players in the land use game; these are: the citizen/neighborhood groups, project proponents, local planers, wetland biologists and other technical experts, hearings examiners, city or county officials and state and federal agency staff. With the knowledge of who the players are likely to be as well as a little about their points of view, the next step is to start developing your wetland protection strategies. Remember to try to stay positive and be persistent. Relationships are built over-time.

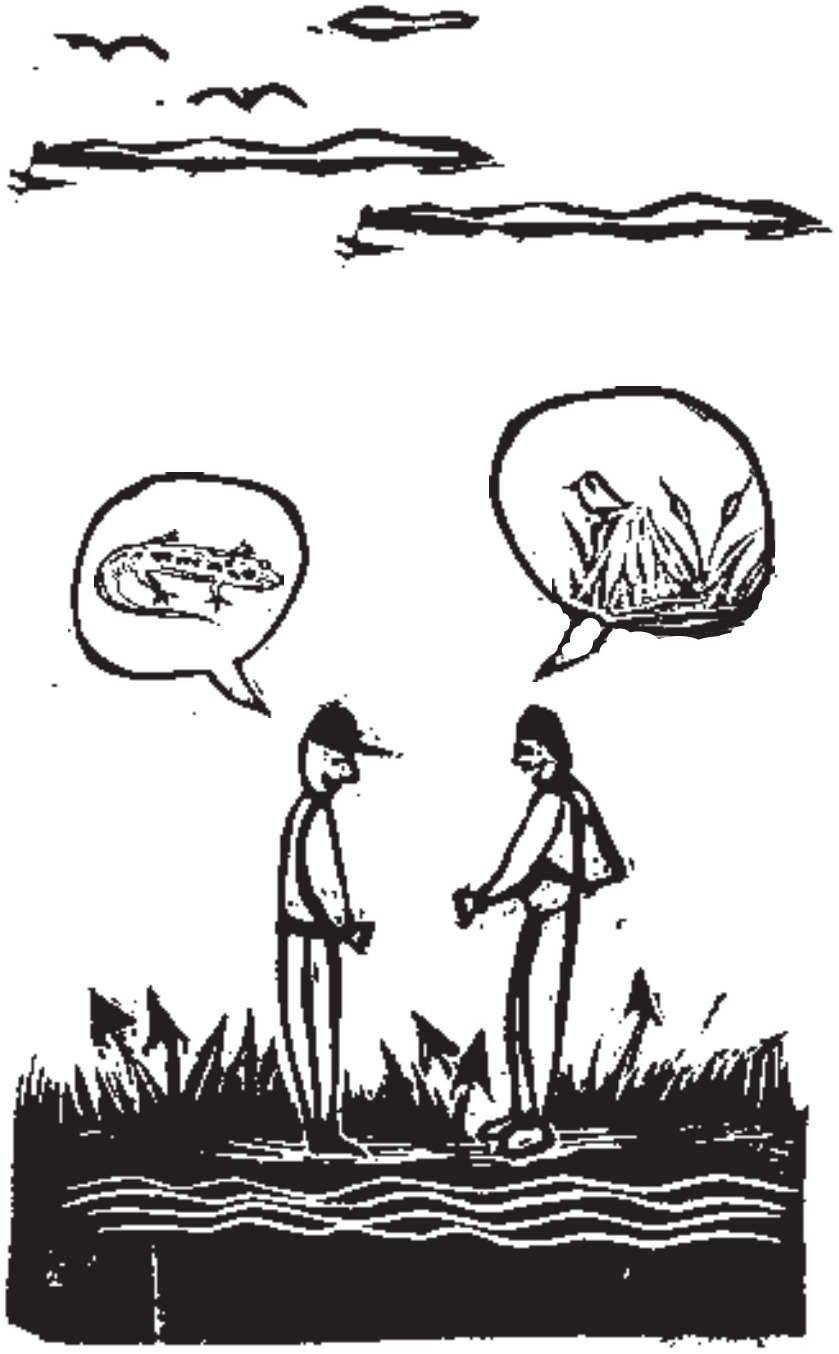
CHAPTER FOUR

CITIZEN ACTION: Strategies for Success

Citizens can and should take the initiative in wetland protection. You and your neighborhood organization can begin a prevention program by monitoring and documenting the unique features of your wetland. You can also track land use planning and development activities in your area and in the watershed. Should development be proposed, you should be prepared to get involved in the early stages of the permitting process. This will help to avoid emergencies that occur due to lack of citizen input. Your objective should always be to promote a win/win solution.

This chapter presents six strategies that will help you to be an effective player in the land use game.

1) GET TO KNOW YOUR WETLAND AND YOUR WATERSHED



2) **LEARN ABOUT LOCAL LAWS AND REGULATIONS**
3) **FIND OUT EARLY ABOUT PROPOSED DEVELOPMENTS**
4) **GET INVOLVED IN WETLAND PROTECTION AT THE PROJECT LEVEL**
5) **MONITOR ENVIRONMENTAL REVIEW OF PROJECTS THAT IMPACT WETLANDS**
6) **INFLUENCE POLICY BY PARTICIPATING IN THE PLANNING PROCESS**

Let's get started with wetland protection!

STRATEGY 1:

GET TO KNOW YOUR WETLAND AND YOUR WATERSHED

One important thing you can do is to document your wetland. Observe it throughout the changing seasons and keep records of how it changes. What birds and animals use the wetland and at what time of year? How wet is your wetland in the spring, summer, autumn and winter? What kind of vegetation is the first to emerge in the spring? Does that same vegetation still dominate the wetland in September? How many kinds of plants grow there? Identify the plants to the species level if possible. Does the wetland have distinct types and layers of vegetation such as tree canopies, shrubs or grasses? If you can't answer all of these questions on your own, there are several information sources available to help you. Some of these resources are listed in Appendix D.

Be sure to answer as many questions as you can and photograph the wetland when you take your notes. Photographs are valuable when trying to prove your point to the Planning Department or to developers. Photographic documentation is especially useful when taken from the same point at different times of the year. An especially good opportunity is during, or just after, major storms when your wetland is full of water.

Now look at what part your wetland plays in the watershed. How is the wetland connected hydrologically to the rest of the watershed? Does it help control flooding during rain storms? Would filling your wetland cause flooding and erosion downstream? Does it provide fish and wildlife habitat? Many Puget Sound streams are drying up in the summer because the wetlands in the headwaters have been filled. What is the status of other wetlands in your watershed? What are the human uses of your watershed? How has it been historically? What land uses are found today? Is it highly urbanized or largely rural? Answers to these questions let you know role your wetland may be playing in the wider landscape. Seek out other groups working upstream and down stream so you can link up.

As you learn about your watershed, keep track of any development activity that may impact your wetland. Development activities that occur up-stream from your site are likely to have the greatest impacts. However, it is often difficult to determine what *is* upstream in a wetland system. Therefore, you should be aware of all development activity in the vicinity. Development activity could include a dock, a new house, a new road or any other activity that changes the land in some way. Developments on adjacent properties can affect your wetland in the following ways:

- Increasing impervious surfaces leading to decreased water quality from additional surface water runoff;
- Disrupting wildlife habitat areas or migration routes; and
- Altering hydrology, thereby drying or flooding the wetland.

Watch for these and other changes that could be attributable to development activity and keep careful records. Did you know that "a 60 percent level of impervious surface in a 1-square mile drainage basin can increase the mean annual peak discharge by a factor of three (Stockdale, 1991)?" Changes in a watershed have a cumulative impact.

As part of your record keeping efforts, you should map your wetland. Ask the Planning Department for a County Tax Assessor Parcel Map that contains your wetland. You should show at least the following on your maps:

- The wetland edge;
- The wetland buffer;
- Topography including steep slopes;
- The location of snags, nesting trees, or other important habitat sites; and
- The location(s) where you were standing when you took your photos.

Information Resources

- **An aerial photo** of the Section(s),Township, and Range (legal descriptors) for your wetland from your local Planning Department for a nominal fee. Often the Washington Department of Transportation(WSDOT) and the Department of Natural Resources (DNR) also have aerial photographs.
- **Soils maps** from the U. S. Department of Agriculture Natural Resource Conservation Service (NRCS), formerly the Soil Conservation Service. These maps are used by city and county Planning Departments.
- **U. S. Geological Survey (USGS) Quadrangle maps,** often referred to as "quad maps," from your local district office or call 1- 800-USA-MAPS. These maps are on a relatively small scale (1:24,000) and are used as base maps by the Washington Department of Fish and Wildlife (WDFW) for their Priority Habitat Species (PHS) listing.
- **National Wetlands Inventory (NWI) maps** should also be available through the 1-800-USA-MAPS number. Your Planning Department should also be able to tell you the NWI classification of the wetland in your neighborhood, if it is mapped. (Or give you information based on a local inventory, if one exists).
- **List of priority plants and animals** from your Planning Department, DNR Natural Heritage Program (plants); or call WDFW Wildlife Habitat Division(animals).
- **Zoning information** from your Planning Department. Zoning information is important because it tells you what types of land uses are allowed on the property containing your wetland as well as the surrounding properties.
- **County Assessor maps** from your County Tax Assessors Office. Also, city's often have a copy that covers its jurisdiction for tax purposes. Each piece of land has its own tax number used for land use inventories and tracking development actions. The maps come in quarter sections. You can purchase the tax map with your wetland on it for a few dollars. Land is frequently referred to by tax parcel number.

If a development is proposed, many jurisdictions require wetland studies to be performed by professional biologists. When this is the case, you can use your wetland records to help you review the biologists' reports. Remember that you have valuable, time-series data that biologists will not have time to collect. It is important to make your information part of the official record. Submit copies of your data and photographs to the permitting agency for the proposed land use action.

Getting to know your wetland requires a lot of work. It is a good idea to work with other concerned citizens in your neighborhood and contact organizations such as WETNET who can provide technical assistance.

STRATEGY 2:

LEARN ABOUT LOCAL LAWS AND REGULATIONS

It is very important to familiarize yourself with the Planning Department responsible for your local wetland. Go in and visit. Ask to speak to a planner with special knowledge of wetlands. Introduce yourself as a concerned citizen or as a member of a citizen wetland stewardship group. This is the time to start forming a good working relationship with the Planning Department. Be prepared with a list of questions about resources that the department has which may be of use to you. Bring a copy of Information Resources and ask what the Planning Department is able to supply and at what cost.

Ask to see a copy of the Critical Areas Ordinance (CAO). The CAO will consist of a set of maps showing all of the known critical area resources in the jurisdiction as well as a set of regulations that deal specifically with critical areas, including wetlands. You may find answers to the following questions about your wetland within the CAO and related wetland inventory:

- What is the wetland rating/classification that the jurisdiction uses?
- Has the wetland been delineated (field verified)?
- How big is the wetland?
- What are the required buffer widths around the wetland?

- Is a variance allowed to this buffer width?
- What types of uses are allowed within the buffer?
- Does the CAO have a provision for signage to identify the presence of a wetland and its associated buffer?
- Does the CAO reference the Washington Priority Habitat and Species Database? Is there a species of significance identified in or near the wetland for which you are gathering information?

Other documents that you should ask for include the jurisdiction's SEPA ordinance, the Zoning Code, the Comprehensive Plan, and the Shoreline Master Program. Familiarize yourself with the organization of each document. Know where the sections are that deal with wetlands. You can ask the planner how the documents relate to each other and how they use them to make decisions. Ask the planner which documents and which sections of those documents give them authority to regulate wetlands.

It may take some time for the planner to find this information. Much of the information is site specific. Therefore, you must be prepared to tell the planner where the wetland is located. In many instances, the planner may not have the information that you are requesting. Be patient, persistent, and courteous and be prepared to do some of the legwork yourself. It is the planner's job to provide you with all of the available information. It is your job to make the planner's job as easy as possible by being clear about what you are looking for and by asking the right questions.

STRATEGY 3:

FIND OUT EARLY ABOUT PROPOSED DEVELOPMENTS

To get involved in the development process, you must find out about development actions when they are still proposals. There are many different ways to do this. The most obvious is to watch for development notices. These are usually large white signs that read: "Notice of Proposed Land Use Action" and are posted in a prominent location. Even though all jurisdictions must post these notices, this is not an entirely reliable method of finding out about proposed projects. It is not uncommon for citizens who oppose the projects to tear these signs down thinking that this will stop the proposed development. This could not be farther from the truth. Developers are required to post the signs once. They usually take pictures to prove that they posted them and that is the extent of their responsibility.

Other ways to monitor actions proposed for the property that you are interested in involve visiting your Planning Department on a regular basis. Some jurisdictions keep parcel data files. A parcel data file contains miscellaneous information about a parcel. Ask if a parcel data file exists for the parcel containing your wetland. If so, ask to be notified if any development action is proposed on the parcel. It is a good idea to request that your name be put in the parcel data files for all parcels immediately adjacent to your site as well. If the jurisdiction has parcel data files, but one does not exist for the parcel containing your wetland, ask that one be created.

Another resource to find out about development proposals is the Development Actions Map or the Master Permit Index. These resources may be known by a different name in each jurisdiction. They are basically a record, either in map or list format, containing information about all current and past development actions. Look for records on or adjacent to your site. Once you are familiar with this resource, monitor it regularly.

STRATEGY 4:

GET INVOLVED IN WETLAND PROTECTION AT THE PROJECT LEVEL

You may be wondering what is meant by a development proposal. A development proposal can mean a major housing development or an addition to a single family home. Both are actions that affect land use and more often than not, require permits or approval by local governments and perhaps state and federal agencies. The table on the next page lists some of the more common permits and what triggers them. A full description of each permit is contained in Appendix B.

The permit review process varies for each of these permits. Some of them offer more opportunities for citizen involvement than others. Usually, when a developer wants an exception to existing

regulations, there is more opportunity for your input and your input becomes even more important. Fortunately, permits such as variances, which allow citizen input, are often needed when a property contains wetlands. The existence of a wetland is often considered a hardship for a developer that reduces the useable land area. The developer will quite often request that the same number of houses, or the same size of building, be placed on the non-wetland portion of the property. This requires a variance.

Regardless the type of development proposed, ask the project planner:

- What are my opportunities for input?
- Is the developer planning a public meeting regarding the project?
- Will there be a pre-application meeting? (This meeting will probably have happened long before you find out about the project.)
- How do I become a party of record? (Parties of record are mailed notices about meetings and hearings, and this establishes your right to appeal decisions.)

Ask to see the project file. All development action files are part of the public record and available for your review. Jurisdictions legally have three days to supply you with any requested information. Most will give you the information right away. Familiarize yourself with the contents of the file and write down the applicant's name, address and phone number.

Early on in the development process, you can work with the

PERMITS EXPLAINED

LAW	REGULATION	PERMIT	TRIGGER/ACTIVITY	LOCAL	STATE	FEDERAL
GMA	CAO	Wetland Alteration	Defined by local ordinance	x		
SMA/GMA	SMP	Shoreline	Developing or constructing	x		
			within a shoreline			
GMA	Zoning	Conditional Use	Special Conditions	x		
	Ordinance	Zoning Code Variance	Requesting a variance	x		
			for hardship reasons			
GMA	Subdivision	Subdivision Approval	Dividing land for residential	x		
	Ordinance		or other purposes			
SEPA	SEPA Ord.	Threshold Determination	State law & local policies	x		
FPA		Class IV General	Logging	x	x	
HPA		Hydraulic Project Approval	All "In-water" work within state		x	
CWA	Section 404	Individual	Discharge or fill above .99 acres		x	
			Discharge from 1 acre to 1.99			x
			Above 2 acres			x
		General	34 such permits			x
CWA	Section 401	Water Quality Certification	If project might result in a			x
			discharge to surface water			
NFIP		Flood Plain Development	Constructing in a floodplain	x		

developer to protect your wetland. If you work with the developer, you are more likely to come up with a win/win situation. You will also be more likely to avoid long and expensive hearings and appeals.

Be prepared by analyzing *in advance* the strengths and weaknesses of the environmental review for the project or the comprehensive plan. Determine the specific adverse environmental impacts of the project and see if these have been identified, avoided and/or mitigated to your satisfaction.

STRATEGY 5:

MONITOR ENVIRONMENTAL REVIEW OF PROJECTS THAT IMPACT WETLANDS

Throughout the permit and/or project review process you have a nubmer of opportunities for citizen action/involvement depending on your jurisdiction and the type of project undergoing review. These opportunities occur at relatively fixed points during the process.

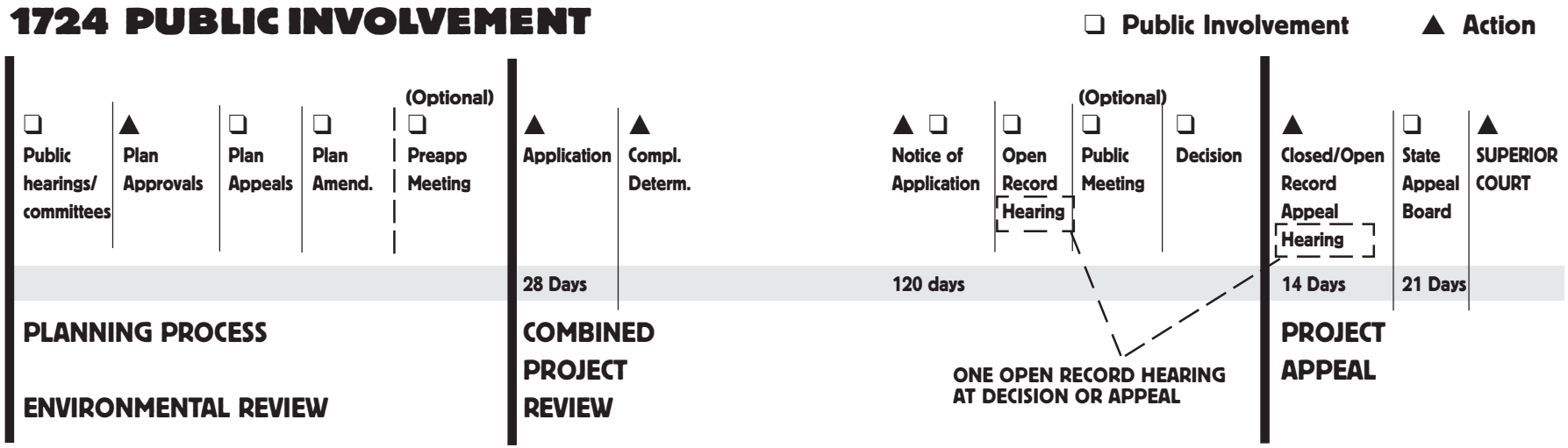
Public involvement for jurisdictions planning under GMA

This section is for jurisdictions planning under GMA. These jurisdictions are affected by regulatory reform under ESHB 1724. For a discussion in greater depth, refer back to Chapter 3. The chart below shows how the process flows over time. The text explains each point in the process.

Pre-application Meeting. Before the applicant even applies for a permit, there is an option for a "pre-application meeting" to gather information on the regulatory process. Not all jurisdictions offer pre-application meetings and for those that do, not all allow public access to these meetings. Your planner can tell you about the process in your jurisdiction and whether you can participate or be notified of projects proposed in your neighborhood.

Generally, a pre-application or pre-submission meeting is very informal. The proponent brings in project drawings and the local government representatives from various departments provide comments on what modifications would be required to comply with locally adopted codes, plans and policies. The local government usually will also let the proponent know the cost of filing fees, the approximate processing time and other pertinent information.

Public Meetings: During the project review there may be public meetings. The law defines these as informal meetings, hearing workshops or other public gatherings of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting



may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

Application: After the pre-application meeting, the applicant submits an application and a request for a permit or permits. All permits are to be processed at the same time.

Completeness Review: The planner has 28 days after receiving the project permit application to give the applicant a written determination of completeness or non-completeness. If additional information is needed to make this determination, the additional information is only material required to start processing the application. *Additional environmental studies may still need to be prepared before the permit decision can be made*. After the information is submitted, the local government has 14 days to determine whether or not the application is now complete.

Notice of Application: Within 14 days after the application is complete, the local government must provide a notice to the public and to the agencies and departments within the jurisdiction that an application has been submitted. The notice of application must contain the following:

- ✓ A description of the proposed project;
- ✓ A list of permits included in the application;
- ✓ Identification of existing environmental documents and studies that evaluate the proposed project;
- ✓ Dates of the public comment period;
- ✓ The hearing schedule; and
- ✓ A preliminary determination of development regulations to be used to determine project mitigation and consistency.

The Combined Project and Environmental Review Process: After the jurisdiction has notified the applicant that the project applicaton is complete, the jurisdiction has 120 days to make a decision, excluding time when studies are being prepared. Jurisdictions often have different administrative procedures for processing permits, but the basic functions are the same:

- ■ Determination of compliance of the application with local plans, policies, and codes. For wetlands, most jurisdictions will now apply buffers established in their CAOs, mandated by the Growth Management Act;
- ■ Determination of SEPA compliance. SEPA acts as an overlay to all other regulations. Its purpose is to take a "hard look" at the proposed project and avoid or minimize impact to the environment where possible. At this point, the SEPA review process determines if there are any gaps in the environmental analysis of the existing plans and determines whether or not significant environmental impacts are adequately mitigated.

This time period is critical. If you know that there are wetlands on site and you want them protected, then you need to contact the planner who is working on the application before he or she makes a site visit. This is the most effective time to provide the planner with information about wetlands on the site. The earlier you become involved in the process the more effective you will be.

Local governments may not issue a threshold determination or recommendation on a project permit until the expiration of the public comment period, with the exception of a determination of significance.

Open Record Hearing Option: There is only one hearing to create the "official record" for local decisions and judicial appeals. The locality must make a choice whether to have an "open record pre-decision hearing" or to hear a local appeal. For many permits, jurisdictions will not hold any pre-decision hearing. An open record hearing, as defined in the law, is a hearing open to the public that is conducted by a single body or officer under local government procedures and which creates the local government's record through testimony and submission of evidence and information. An open record hearing may be held prior to a local government decision on a project permit this is known as an "open record predecision hearing." An open record may be held on an appeal, known as an "open record appeal hearing," if no open record predecision has been held on the project permit. It is not a public meeting to obtain comments.

Open Record Pre-Decision Hearing: If an open record

predecision hearing is required and the threshold determination requires public notice, the threshold determination must be issued 15 days prior to the open record public hearing. The local government must use reasonable methods to give the public notice, such as a public notice advertisement in the local newspaper or the public access television station. A number of methods are suggested in the law, some of which may be obscure to the ordinary citizen. You should find out from the planner how notices will be made.

Decision: After the planner has reviewed the permit application and has written the recommendation, the final decision on whether or not to issues the permit(s) can be made by the planner, the jurisdiction's elected officials or a hearings examiner. These decisions are always made in an open forum. There are three types of public or open record hearings:

Hearings on Appeals: An appeal is a contentious, complicated and expensive procedure. A good job working with the other players early in the game should help you to avoid having to appeal a decision that you do not like.

There are basically four types of appeals that can be made, if the outcome of the decision is not to the liking of any party of record: (1) and (2) appeals to the local permitting agency — a closed record or an open record appeal; (3) a possible appeal to a state board, depending on the type of permit; and (4) a judicial appeal to a court. It is usual practice that only parties of record can appeal a decision. This is another reason why it is important for you to get your name in the record. Ask your planner to explain the appeal process on the decision to be made regarding the proposal that you are interested in.

Local Appeals: There can be an open record appeal or a closed record appeal. This depends on whether an open record predecision hearing has occurred.

The **open record appeal** is for a local appeal on a permit decision. For example, after staff makes a permit decision, a jurisdiction may allow an appeal hearing to a hearings examiner, a special board or committee, the county or city council.

A **closed record appeal** is an administrative appeal on the record to a local government body or officer, including the legislative body, which occurs after an open record pre-decision hearing. This occurs, for example, when a hearings examiner has made a decision on a permit. It is on the record, but little or no new evidence is allowed, and only the appeal argument is allowed.

For judicial appeals, Land Use Petition Act (LUPA) provides for appeals of local land use decisions to Superior Court. LUPA establishes that the local land use decision is not "stayed" unless so ordered by a court. The standard of review and standing are unique: "person aggrieved" is defined, and there is no longer an "arbitrary and capricious" standard.

Deadlines

■ Open record appeals must be decided within 90 days, and closed record appeals within 60 days.

■ The filing deadline for the appeals that are combined with environmental appeals is 14 days. The appeal period can be extended for an additional seven days, if state or local rules adopted pursuant to SEPA allow public comment on a DNS issued as part of the appealable project permit decision.

■ The total review period for an application cannot exceed 120 days, excluding the applicant's preparation of studies. However, a government is not liable for damages if this time frame is exceeded.

■ Land Use Petition Act appeals must be filed in Superior Court within 21 days of "issuance of decision," i.e., three days after the decision is mailed or, if not mailed, the date notice is provided that the written decision is publicly available or, if made by Council, the date the resolution with decision is decided.

Public involvement for SEPA-only jurisdictions

This section applies to those jurisdictions that are not planning under GMA. The SEPA comment period and, if required, the public hearing for the permit are two critical opportunities for public involveme

Pre-application Meeting: Before the applicant even applies for a permit, there is an option for a "pre-application meeting" to gather information on the regulatory process. See above for full explanation.

Application: When the application is received by the local government, the SEPA checklist and plat application are submitted concurrently. The SEPA clock begins. The threshold determination

must be completed within 90 days.

Before the Threshold Determination: The local planner makes the threshold determination, so you need to coordiante with the planner and express your concerns in writing before the planner issues the determination. Request a direct response in writing prior to the issuance of the threshold determination. Rules for issuing a threshold determination are very specific and are found in WAC 197-11-330 in the SEPA Handbook.

Threshold Determination: After a threshold determination, most jurisdictions allow a 15-day comment period following the date of issuance before the threshold determination becomes final. Check your local SEPA ordinance for the specific time frame. Jurisdictions are required to consider your comments prior to proceeding with the proposed action. This term is undefined in the laws, so its a good idea to request a reply in writing by a specific date and send a copy to your local council person.

A Public Notice of the Threshold Determination is required. Therefore, find out in which paper your jurisdictions publishes its legal notices and make it a habit to read them. Also, the Department of Ecology publishes a SEPA Register listing threshold determinations by jurisdiction.

Public Hearing: Under a MDNS or a DNS, find out if there will be a public hearing. If you supported conditions established in a SEPA review, then it is prudent to testify that they be adopted by the hearings examiner as conditions of permit approval.

Permit Issuance: As with the SEPA Threshold Determination, there is usually a specific timeline (which should be in the code; this timeline varies from 10 to 30 days) during which you must appeal if you disagree with the permit conditions. Check to see that your concerns were incorporated into the permit conditions. If not, you have the option of appealing. Read the permit conditions carefully. You can monitor these conditions to ensure compliance. Caution: be sure that the SEPA conditions are attached to the permit! It's hard to believe, but it has happened that citizens have testified to get good mitigation measures only to have them left off by administrative oversight. Request the Planner to notify you of the permit conditions, before the permit is issued.

Appeal: If you decide to appeal, the time frame is critical. If you fail to appeal at this stage, it can affect the strength of your legal argument further along in the process. Read the SEPA section on appeals at WAC 197-11-660, as well as your local jurisdiction's appeal process ordinance(both in the SEPA Ordinance and the Hearings Examiner Ordinance if your jurisdiction has one).

HEARINGS STRATEGIES

If you feel that the project does not protect the wetland resource, express your general concern in a letter to the record (via the Planning Department) and be prepared to back up your statement. Supporting data can be in the form of photographs or local knowledge that you have from living in the area (e.g., it floods a lot more than this study indicates, and here are the pictures to prove it). Other data includes bird sightings or technical information from a biologist that your neighborhood group hired. Try to keep your testimony specific to the inadequacies of the existing environmental review. Propose alternative protection you think would be adequate and justify your recommendation with evidence.

The ground rules for the hearing may limit testimony, either by imposing time limits or by simply stating that redundant testi-

SEPA PUBLIC INVOLVEMENT

❑ Public Involvement ▲ Action

❑ Preapplication Meeting	▲ Application	❑ Written Comment	▲ Threshold Determination	▲ Final Determination	▲ Permit	❑ Written Comment	❑ Appeal
			90 Day Review	10 - 15 Day Comment Period			

mony be limited. Read your public participation plan or local hearings examiner ordinance to familiarize yourself with this procedure before you get to the public hearing. It may be helpful to attend a few public hearings before you testify so that the surroundings won't be completely new. Even if someone else has already made your point, you should testify that you agree with the previous comments. The whole purpose of the public process is to gather meaningful public input, so participate at every opportunity!

It is incredibly important not to be intimidated by the quasi-judicial setting of most public hearings. The local government officials, experienced developers, and attorneys are paid to participate in these hearings. Most of them are at ease and are familiar with the surroundings. Although it can be daunting, a public hearing is a powerful opportunity to influence the outcome of a project. Do your homework and speak in a clear and concise manner. Many hearings examiners are sympathetic to citizen discomfort with the process, so just try to relax and make your point.

Hearings examiners will look only to the regulations to make their determinations, therefore keep your testimony specific to whether the project complies with these regulations. Look especially to your jurisdiction's Comprehensive Plan policies, since these policies are now legally binding due to the GMA. All permitted projects must be consistent with the goals and policies presented in the Comprehensive Plan (e.g., "protecting and enhancing environmental quality").

STRATEGY 6:

INFLUENCE POLICY BY PARTICIPATING IN THE PLANNING PROCESS

With the changes brought by Washington state regulatory reform, much of the action has moved to the early planning states. Therefore, whereas this strategy is listed last, it is not the least important. It may be the most important.

■ Stay the course with your Comprehensive Plan and its environmental review

Despite the deadlines of the GMA, many jurisdictions remain mired in the planning process. Public involvement is vital at this stage. This process may seem interminable, but stay with it. Persistence is a major ingredient of successful citizen action. You will have several opportunities in the planning process to make a difference.

It is especially important to follow and participate in the SEPA review for the Comprehensive Plan, Critical Areas Ordinance and other development regulations. Under regulatory reform the environmental review of these documents can be the only environmental analysis there is. Section 201 of ESHB 1724, which amends SEPA, finds that "...plans, regulations, rules and laws often provide environmental analysis and mitigation measures for project actions without the need for an Environmental Impact Statement or further project mitigation." This section states that while projects should continue to receive environmental review, this review must not duplicate other analysis and should be part of one "project review process."

Local jurisdictions now can determine that the environmental review of the Comprehensive Plan had no significant environmental impacts and do only a limited environmental review as part of the SEPA Checklist. On the other hand, the local jurisdiction can, and usually should, identify gaps to be addressed. Either way the jurisdiction can determine that the analysis is "adequate" to determine and evaluate the environmental impacts of a specific project. You may not agree. The law requires that the environmental review identify, review and mitigate all "significant environmental impacts" or additional reviews required.

The theory behind the reforms is that these provisions will encourage jurisdictions to undertake environmental review at the earliest planning stages. Broad-based review will enable local governments to consider issues of regional and cumulative significance.

ESHB 1724 gives jurisdictions great latitude in determining what is "adequate" environmental review. Unfortunately, many jurisdictions who are planning under GMA determined that there was no environmental significance of the Comprehensive Plan. In these cases, there is no plan level review.

Other jurisdictions have done inadequate, or barely adequate, environmental reviews of the Comprehensive Plan. This situation exists in many jurisdictions because the cost of doing a good plan-level SEPA review is extremely expensive.

A tricky area here is financing of public facilities. The law states that the presumption of adequacy rests on provision of financing. Therefore, it is important not to let inadequate financing arrangements be included in the final Comprehensive Plan. If this occurs, development can be allowed without solid financing or planning, thereby reducing the Comprehensive Plan merely to good intentions.

In July 1995, jurisdictions began developing rules and regulations under this new law. Be there! All citizens, not just builders, developers and realtors, must be part of the rule-making process.

■ Participate in the new plan amendment/docketing process.

It is becoming increasing clear that most jurisdictions do not want to revisit their "Interim" Critical Areas Ordinance. However, the new plan amendment/docketing process (established in ESHB 1724) provides an opportunity to raise this issue and propose changes to the CAO. In fact, the addition of a higher standard for Critical Areas Ordinances (also established by ESHB 1724) enables citizens to strengthen the ordinance based on "best available science." This is a local issue that you and your neighbors can now influence. Once a Critical Areas Ordinance is adopted, it is applied to individual projects at permit review. Study your Critical Areas Ordinance until you know its provisions and how it will affect your wetland.

Ordinances often have loopholes that allow wetlands to be altered or degraded. The following key issues should be defined in your ordinance to provide effective wetlands protection and avoid regulatory loopholes:

- ✓ Does your Critical Areas Ordinance define "streams" and "ditches"? Can "ditches" be regulated as wetlands?
- ✓ Does your CAO have a grading or clearing ordinance?
- ✓ How is your CAO triggered. By a permit? Or does any activity in a critical area trigger enforcement?
- ✓ Are permitted alterations and variances allowed for wetland protection measures? What kinds?
- ✓ Are uses allowed within wetland buffers? If so, what are they?
- ✓ What kind of mitigation is required? Has your jurisdiction adopted Ecology's mitigation ratios?
- ✓ Does your jurisdiction keep track of "cumulative impacts" to wetlands? If so, how?

■ Participate in Phase 2 of GMA; implementing regulations.

This is where the rubber hits the road. The implementing regulations are the nuts-and-bolts of re-writing a jurisdiction's codes and land use zoning to be consistent with the goals and policies of the recently adopted GMA Comprehensive Plan. The CAO provisions should be integrated into the zoning code and maps. Citizen diligence will ensure that accuracy prevails. Divide up the job.

Watch for "technical corrections" that are really policy shifts. Also, there is a tendency in some jurisdictions to suggest amending the Comprehensive Plan because the implementing regulations are not in compliance with it, rather than the other way round. Rezones can be a red flag, especially if the rezone is actually spot zoning. Also, note whether the actual parcel zoning is in tune with the policies. How many sub-standard (i.e., sub-divided) parcels are grand-fathered under the new plan? Does the cumulative number of them exceed the GMA growth goals?

SUMMARY

Now that you've developed a depth of knowledge and experience, it is time to volunteer or be appointed to a citizens advisory committee, task force or Planning Commission. Be a part of the structure making the decisions. Participate in a buddy system; two or more voices with the same message will be heard in different ways and have more than twice the clout on a committee or task force. You are already an expert. Other elected officials have expertise in specific areas such as health care, police, schools, finance, etc., but are not experts on every issue. You can strengthen the local elected group with your knowledge and experience. Go for it!

CHAPTER FIVE

A WETLAND EMERGENCY: The Bulldozer is Here!

This chapter guides you through the process of handling a wetland or other land use emergency. If there is a bulldozer or other major piece of equipment in your wetland, you have an emergency. To find out how serious the emergency is will take some checking and detective work.

IS IT A REAL EMERGENCY?

There are two possibilities:

1. *There is a serious emergency.* The bulldozer operator is in violation of local development regulations because there is either: (a) no permit, or (b) there is a permit, but the permit conditions are not being met.

2. *There may not be be an emergency*. The bulldozer operator has a permit with conditions attached, and the permit is being followed. Either way, you have to check it out and quickly.

CHECKING IT OUT

The first step in determining whether or not you have an emergency is to size up the situation. The quickest way to do this is simply to ask the bulldozer operator. Useful tools to take with you are: paper, a pencil, a camera, and, if you have one, a cellular phone. If you are not comfortable with this approach, or this approach does not work, call the Planning Department.

The three pieces of helpful information to start your investigation are:

1. **A permit and/or a file number or an appropriate site address, parcel number or section-township-range;**
2. **The name and number of the city or county contact person listed on the permit; and**
3. **The conditions attached to the permit.**

The bulldozer operator may say that no permit is required. If so, ask him to elaborate. Ask questions like, "Did the Planning Department tell you that you didn't need a permit?" "Whom did you speak to at the Planning Department?" Then call the Planning Department to verify this information.

TWO FURTHER POSSIBILITIES:

1. The bulldozer operator does have a permit with specific conditions attached. You think, however, that the permit might be in error, or the conditions are not being met. If this is the case, you should call the number on the permit for clarification. Many jurisdictions do not make site visits prior to issuing permits. Therefore, the Planning Department may not know that there are wetlands on the site.

2. The Planning Department has absolutely no idea what you're talking about. Your local Planning Department may not be able to help you for two reasons:

- The wetland in question isn't in its jurisdiction; or
- The action occurring isn't regulated or is exempt under local regulations.

In either case, ask your planner to help you determine the problem and find a solution. Other agencies who may have jurisdiction include: Washington Department of Ecology (Ecology), Shorelands Section; Washington Department of Fish and Wildlife (WDFW), or perhaps the U.S. Army Corps of Engineers. The Players chapter of this Guide can help you determine which agency may be responsible.

GETTING A STOP WORK ORDER

If the bulldozer operator is in violation of the permit or is operating without a permit, tell him to stop. Also let him know that you are calling the Planning Department. Call the Planning Department immediately and request that a STOP WORK Order be placed on the bulldozer activity. Do not simply leave your name and phone number with a receptionist; insist on speaking to someone such as a Code Enforcement Officer, who can issue a STOP WORK Order based on the information you have provided. In some jurisdictions, you may be required to file a written complaint. If so, go to the Planning Department immediately and file a complaint or speak to either the Code Enforcement Officer or the Planning Director.

As is often the case, your emergency can happen on a weekend. The Public Works Department usually has an emergency number. You can call that number. Or if all else fails, call your Council Member. An elected official may be the only one who can generate action in off hours.

If either the bulldozer operator or the property owner is being belligerent or uncooperative, you may request that a uniformed police officer accompany the planning/enforcement personnel to post the STOP WORK Order.

WHEN CALLING THE PLANNING DEPARTMENT, HAVE KEY INFORMATION READY:

1. The legal description of the site including references to the "Section, Township, and Range" specific to the parcel. A good place to look is your own property tax statement or deed.;

2. The tax parcel number, which may enable the Planning Department to access a legal description of the property. If you are not able to get the site's parcel number, you may be able to use your parcel number to locate the general area for the planner. Ask the planner to help you.

3. Details about the site and the activity such as:

- How many cubic yards of dirt are being removed? (A dump truck is 9 -10 cubic yards.) This information will help the Planning Department if the amount of dirt is at, or above, a regulatory threshold.
- What is the approximate size of the wetland?
- How far away from the wetland is the bulldozer?

Remember to document the activity either with a camera or a video. Also, document your phone calls. Take notes. Get the name of the person you are speaking to and the time you called. This information is invaluable in establishing a record.

FINAL QUESTIONS

Ask your Planning Department to explain what happens after the violation. You need answers to the following questions.

- Will restoration be ordered?
- Will monitoring be required?
- What timeline is specified?
- Will the violation need to be resolved before the applicant can proceed?
- How will you know when the violation is considered corrected by the local Planning Department?
- Does your Critical Areas Ordinance have specific processes for violations?

It is important to make sure that you send follow-up correspondence to the staff person in charge of resolving the violation. While it is quicker to call, it is more effective to both call and send a letter with photos, because you create a paper trail in case of an appeal. It is also a good idea to send a copy of your letter to your city or county commissioner/council member and to the Mayor or County Executive. The process of keeping your records updated is called building a "paper trail." Written notes and copies of correspondence will create a written record that could be useful in the future. Unfortunately, it can take a long time to resolve a violation, easily a year or more.

Whew! Breathe a sigh of relief. You have handled your emergency for now.

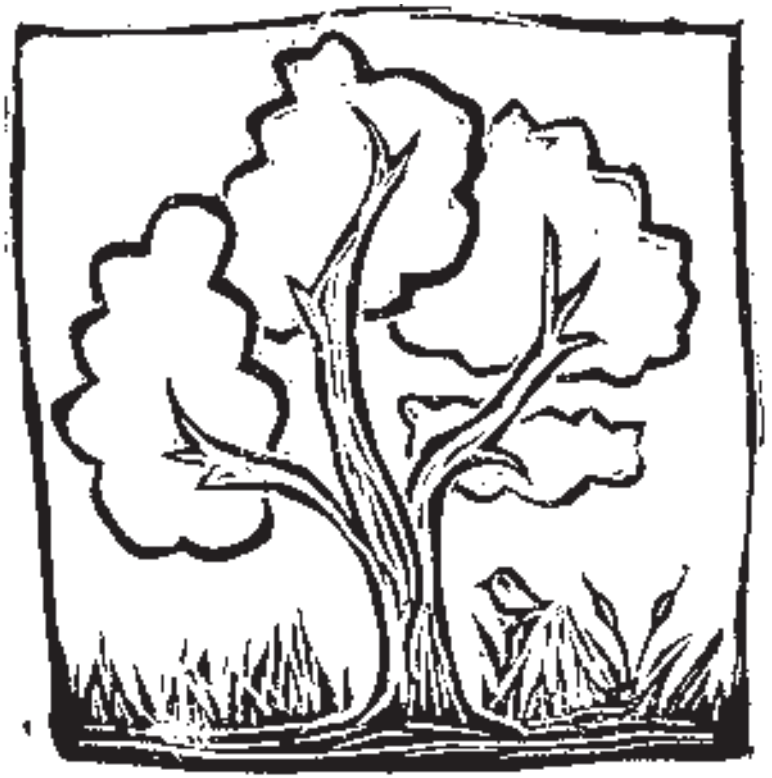
SUMMARY

Once handling this emergency and giving yourself a pat on the back, you should begin to think ahead. You have learned a great deal from this experience. You know your local planner and many of the players discussed in Chapter 3. Now is the time to begin preventing such an emergency from happening again. Turn to Chapter 4 and begin initiating strategies to protect your wetland and watershed over the long haul. Perhaps the most important thing is to be part of the planning process. Many decisions on how your environment is protected are made at the comprehensive plan level. Once the plan is in place it can be amended, but this takes time. Stay involved. There are many people who can and will work with you. So reach out to your neighbors and organizations with interests similar to yours. Wetland protection can be an adventure and a very fufilling experience that will improve your quality of life and that of your community.

APPENDIX A

REGULATORY PERMITS

This appendix explains each permit you are likely to encounter in dealing with land use decisions and wetland protection.



LOCAL PERMITS

1. Conditional Use Permits (CUPs) or Special Use Permits (SUPs). These permits cover a specific activity within a zone that needs a special/conditional use review and permit. As a practical matter, the only difference in SUPs and CUPs is the term employed in a particular enabling legislation, such as the Critical Areas Ordinance. The Critical Areas Ordinance will specify conditions and findings required to grant such relief, and the relief will be granted only when these conditions are found to exist. For example, docks, floats or buoys are considered conditional uses in Class II wetlands in King County. Therefore, they would be permitted uses assuming the ordinance's specified conditions are met. CUPs or SUPs are also typically required for projects such as gravel pits, landfills, prisons, etc. Read your Zoning Code to find out which activities require CUPs or SUPs.

2. Plats or subdivisions. Local ordinances regulate the division of land for residential or other purposes. The regulations establish requirements including minimal lot size, lot configuration, frontage, streets, utilities, site design and open space. The common types of subdivisions are:

a. *Large lot subdivisions* regulate subdivision of land into large parcels, usually five acres or greater. This type is approved administratively.

b. *Short plat*s regulate subdivision of land into four or fewer lots. This application may require surveys and a map. This type of permit is approved administratively.

c. *Plats* regulate subdivision of land when five or, in some

cities, ten or more lots are proposed. This process requires a public hearing. The approval is usually in two parts: (1) preliminary, which shows number of lots and general layout of streets, etc., and (2) the final approval, which requires submittal of complete survey data and detailed plans illustrating building lots, street layout and design. Lots cannot be developed until the final plat is approved.

3. Building Permit. Permits to construct buildings or additions to existing facilities are required by counties and cities, except under certain circumstances. The application requires detailed final plans for structures. Permits are issued upon approval of the plans. Single family homes generally are exempt under SEPA and under Section 404 of the Clean Water Act under an amendment to General Permit 26.

4. Zoning Code Variance. Applicants may seek a variance if strict interpretation of an ordinance would impose a specific and unusual hardship related to the applicant's property. CAOs have a "reasonable use" clause in cases where all economic use would be denied on the property based on strict application of the ordinance. A public hearing is required.

5. Wetland Alteration Permit. This permit is used as a "triggering mechanism" for the Critical Areas Ordinance in many jurisdictions. It is required each time a wetland is affected by a land use change.

6. Rezones. A rezone is a request to change the approved use of the land. For instance, a rezone would be needed to change the zoning on a parcel from agricultural to multi-family. Rezones are often precursors to high density development. Rezones are typically administrative decisions. Under GMA, changes to underlying zoning should occur only once a year, concurrent with Comprehensive Plan changes.

7. Annexation. These are city actions to expand a city boundary into an unincorporated area. Annexations may affect wetlands. For example, one jurisdiction's regulations may be more restrictive (or permissive) than another's. As a general rule, city regulations tend to be more restrictive, but you will have to compare the city and county regulations to be certain that the anticipated zoning will not lessen existing protection. You should insist in writing that if wetlands are in the annexation area, a detailed inventory, including field-verified wetland edges, classification and protection under the Critical Areas Ordinance, be a part of the annexation's SEPA conditions. Annexations may or may not require public hearings; check your zoning code.

8. Clearing and/or Grading permit. Many jurisdictions have a separate permit for clearing and grading. This permit is often in the purview of a different administrative unit than the one monitoring critical areas. The department that issues this permit may not know, or be concerned, about wetlands or environmental issues. Destruction can occur before you know it.

9. Shoreline Substantial Development Permit (SDP). This permit is required for any development or construction activity valued at $2,500 or more located within shorelines (i.e., along Class I waters of the state). This requirement applies to any activity that materially interferes with the normal public use of the water or shorelines of the state, any activity listed as a conditional use in the local shoreline master plan and/or any activity that requires a variance from the local shoreline master program. Shorelines are lakes, including reservoirs with 20 or more surface acres; streams where the mean annual flow is 20 cubic feet per second or greater; and marine waters, plus an area landward for 200 feet measured on a horizontal plane from the ordinary high water mark; and all associated marshes, bogs, swamps, and river deltas within or contiguous with this 200-foot area.

10. Floodplain Development Permit. This permit is required in jurisdictions participating in the National Flood Insurance Program (NFIP). The jurisdiction must review the project to determine if it is in an identified floodplain shown on NFIP maps. If so, the local jurisdiction must require a permit. Conditions are imposed to reduce the potential for damage caused by floodwaters. Permits are required for structures, as well as, for filling or grading. A public hearing is not normally required.

FEDERAL AND STATE PERMITS

11. Hydraulic Project Approval (HPA). HPAs are required for any in-water work that uses, obstructs, or changes the natural flow or bed of any fresh or saltwater body of the state. They are issued by the state Department of Fish and Wildlife. No public

hearing is required.

12. Clean Water Act/Section 404 - Section 404 permits are issued by the U. S. Army Corps of Engineers. However, prior to receiving a 404 permit from the Corps, an application must undergo environmental review under SEPA at the local government level. If a 404 permit is required, the SEPA determination should state this requirement and also specify the quantity and type of dredge/fill material. There are two types of 404 permits. An individual permit, which requires approval by the U.S. Army Corps of Engineers, and Nationwide Permits. There are over thirty Nationwide Permits that allow landowners to act if they are undertaking certain generic activities that will not have significant impacts. You can get a list of these permits from the U.S. Army Corps of Engineers. If you are concerned about wetland impacts in your jurisdiction, you should track all 404 permits.

To track 404 permits, contact the local Corps District Office and request to be put on their mailing list for Notice of Applications.

13. State 401 Water Quality Certification. This certification is required of any applicant for a federal permit to conduct any activity that may result in a discharge into surface waters. The federal agency receives a certification from the state that the discharge complies with federal law and the aquatic protection requirements of state law.

14. Class IV General Forest Practice Applications (FPAs). Class IV General Forest Practice Applications (FPAs). If logging is occurring in your area, itís helpful to find out what kind of logging permit was issued. Then youíll know which agency to call. Class I, II, and III FPAs are exempt from local government regulations and occur on land zoned for forestry. Here Department of Natural Resources (DNR) is the contact. It is a good idea to keep track of FPAs and coordinate with your local planner and with the DNR forester responsible for your region. A Class IV General FPA is required for any timber cutting over 5,000 board feet (about one logging truck full.) Class IV ìGeneralsî often result in damage to wetland resources. Normally, DNR is the lead agency for FPAs. However, some local governments have agreements with the DNR that require Class IV Generals to meet the local jurisdictionís rules and to use SEPA to condition the FPA. No public hearing is required.

15. Incidental Take Permit (ITP). Under the Endangered Species Act, this is a permit that exempts, for a specified set of activities, the applicant from the prohibitions of a 'take' of a listed species. This permit can only be issued after the completion of a Habitat Conservation Plan. These permits are referred to as Section 10 permits.

16. Habitat Conservation Plan (HCP). A planning document that is a mandatory component of an Incidental Take Permit. This plan, negotiated by the lead agency and the applicant, specifies the activities that will be covered by the permit and how their effects will be minimized and mitigated. This plan also describes the geographic limits of the covered activities.

APPENDIX B

GLOSSARY

Action. With regard to SEPA, new or continuing activities entirely or partly regulated, approved, financed, assisted or conducted by agencies; new or revised agency rules, regulations, plans, policies, or procedures; legislative proposals.

Agencies. State or local government body, board, commission or department that can take actions, except for the judiciary and state Legislature. This includes special districts, such as sewer, water, public utility, hospital, schools and fire districts, etc.

Applicant. With regard to SEPA, any person or entity, including an agency, applying for written permission to engage in an activity, where such permission is required by law or agency rule. A project proponent is usually the applicant.

Comprehensive Plan. A long-range plan to guide the growth and development of a community or a region; it includes analysis, recommendations and proposals that address the community's or region's population, economy, housing, transportation, community facilities and land use.

Community Plan (or Subarea Plan). A plan specific for a neighborhood or small planning area.

County-wide Planning Policies (CPPs). Written policy statements for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted. This framework ensures that city and county comprehensive plans are consistent, as required under GMA.

Development regulations. Controls placed on development or land use activities.

Ditch. A long, narrow, man-made channel to expedite drainage.

Dredging. Any physical digging into the bottom sediment of a water body or wetland. Dredging is typically done with mechanical or hydraulic machines, and it changes the shape and form of the bottom. Dredging is routinely done in many downstream river segments and shallow parts of Puget Sound to maintain navigation channels that would otherwise fill with sediment and block ship passage.

Ecosystem. A community of organisms interacting with one another and with their physical environment, such as a rain forest, pond or estuary. Damage to any part of a complex system, such as Puget Sound, will affect the whole. Puget Sound can also be thought of as the sum of many interconnected ecosystems such as forests, wetlands, streams, rivers and bays. Ecosystem is a concept applied to communities of different scales and signifies the interrelationships that must be considered.

Environmental Impact Statement (EIS). A document that discusses the likely significant impacts of a development project or a planning proposal, ways to lessen the impact and alternatives to the project or proposal. EISs are required by the National and State Environmental Policy Acts (NEPA and SEPA).

Erosion. Wearing away of rock or soil by water during flooding, and by wind, ice and other forces.

Facultative. Plants that occur in wetlands and uplands.

Floodplain. An area adjacent to a lake, stream, ocean or other body of water that lies outside of the ordinary banks of the water and is periodically inundated by flood flows.

Flood storage. The process by which peak flows (from precipitation, runoff, groundwater discharge, etc.) enter wetlands, lakes or artificial retention/detention facilities and thereby are delayed in their down slope journey to receiving waters.

Forest practice. Any activity conducted on, or directly pertaining to, forest land and relating to growing, harvesting or processing timber. These activities include, but are not limited to road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees and brush control.

Habitat. The specific area or environment in which a particular type of plant or animal lives. An organism's habitat must provide all of the basic requirements for life and should be free of harmful contaminants and disturbances.

Heavy metals. Elements in rocks and minerals that are mined for use in human activities. These activities may generate waste products containing a percentage of these metals. Metals are also naturally released to the environment by erosion. Certain metals, such as mercury, lead, nickel, zinc and cadmium, are of environmental concern because they are released to the environment in excessive amounts by human activity. They are generally toxic to life at certain concentrations. Since metals are elements, they do not break down in the environment over time and can be incorporated into plant and animal tissue.

Hydraulics Project Approval (HPA). Approval from the WDFW required by the state hydraulics code for any construction that will "use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state." The hydraulic code is designed to protect fish life.

Hydric soil. Soil that is wet long enough to periodically produce anaerobic conditions, thereby influencing soil chemistry and biota.

Hydrologic cycle. The continual cycling of water between the land, the sea, and the atmosphere through evaporation, condensation, precipitation, evapotranspiration from plants, absorption into the soil, and stream runoff.

Hydrophyte. Any plant growing in soil that is at least periodically deficient in oxygen as a result of excessive water content.

Isolated wetlands. Those regulated wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

Land use regulation. Statutes, rules, ordinances, or guidelines with the force of law controlling the type, mode, design or other aspect of a use of land. Land use regulations are local legislative acts ("ordinances") or state legislative acts ("statutes"). However, they also include formally adopted orders and rules of administrative agencies ("administrative rules and regulations").

Marsh. A common term applied to describe treeless wetlands characterized by shallow water and abundant emergent, floating, and submergent wetland flora. Marshes are typically found in shallow basins, on lake margins, along low gradient rivers, and in low energy tidal areas. Waters may be fresh, brackish, or saline.

Mitigation. Mitigation is the attempt to reduce impacts of development on wetlands. Mitigation includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation in order of preference is:

1. Avoiding the impact altogether by not taking a certain action or actions;
2. Minimizing impacts by limiting the degree of magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the project;
5. Compensating for the impact by replacing, enhancing or providing substitute resources of environments;
6. Monitoring the impact and the compensation project and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the above measures.

Monitor. The process of systematically and repeatedly measuring conditions to track changes. For example, dissolved oxygen content may be monitored over a period of several years to identify trends in concentration.

Nutrients. Essential chemicals that are needed by plants and animals for life. If other physical and chemical conditions are optimal, too many nutrients can degrade water quality by promoting excessive growth and subsequent decay of plants, especially algae. Some nutrients can be toxic to animals at high concentrations.

Obligate. Plants that almost always occur in wetlands.

Ordinance. A locally adopted regulation.

Organic soil. A "histosol" as defined by the U.S. Natural Resource Conservation Service. In general, a soil is a histosol either if more than 50% of the upper 80 cm of soil is organic material, or if organic material of any thickness rests on rock or on fragmented material having interstices filled with organic materials.

Performance bond. A bond purchased by a project proponent, similar to an insurance policy. If proposed mitigation measures fail, the performance bond may be forfeited to provide the money necessary to correct the failed mitigation measures.

Project permit or project permit application. Any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, Planned Unit Developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by Critical Area Ordinances, site-specific rezones authorized by the Comprehensive Plan or subarea plan, but excluding the adoption or amendment of a Comprehensive Plan, subarea plan, or development regulations.

Revised Code of Washington (RCW). The compilation of the laws of the state of Washington published by the Statute Law Committee.

Resolution. The degree of observable or represented detail on a map, aerial photo or other information product. Resolution depends upon the minimumal distance between features, the contrast between features, the data product (aerial photograph vs. a map), and the specificity of characteristics observable or represented by those features.

Scale. The relationship between a measurable distance on a map, aerial photo or other data or information product and the corresponding distance on the earth. Scale is expressed as an equivalence, such as 1 inch = 1 mile, or as a numerical fraction or ratio (1:24,000 or 1:64,000). Larger scale data or information products are those with features represented at a size corresponding more closely to their actual size than the same features represented on smaller scale data or products. Small scale maps or products are those with ratios of 1:125,000 to 1:500,000, intermediate scale includes ratios of 1:50,000 to 1:125,000, and large-scale includes ratios of 1:2000 to 1:50,000. Data or products at very large scales are generally referred to as "very detailed" or at "very large scale." These scales are rarely practical for regional or statewide mapping, but are essential for local efforts.

Scoping. A process to determine the range of proposed actions, alternatives, and impacts to be analyzed in an Environmental Impact Statement.

Shoreline development. As regulated by the SMA, the construction over water or within a shoreline zone (generally 200 feet landward of the water) of structures such as building, piers, bulkheads, and breakwaters, including environmental alterations such as dredging and filling, or any project that interferes with public navigational rights on the surface waters.

Shoreline Master Plan (SMP). Adopted by a local government agency to regulate development in shoreline areas.

Special permit uses. Uses that are permitted only upon issuance of a special permit by a regulatory board or agency after fact-finding to determine the particular natural values and hazards at a site, the impact of the specific proposed use, and the compliance of the use with general or special standards contained in the regulations. The regulatory board or agency often exercises considerable discretion in evaluating the proposed use in light of general regulatory goals and standards and may attach conditions to permit to minimize impact upon critical areas.

Statute. A legislative act adopted by Congress or a state legislature.

Subarea plan. A plan for a smaller area than that of the Comprehensive Plan.

Threatened An animal or plant whose population is nearing endangered status; an organism whose existence and environment is in potential jeopardy and whose distribution may be limited to a few local areas.

Toxic substances and toxicants Chemical substances such as pesticides, plastics, metals, detergents, chlorine, and industrial wastes that are poisonous, carcinogenic, or otherwise directly harmful to life.

Washington Administrative Code (WAC). All state regulations adopted by state agencies through the rule-making process. For example, Chapter 173-201 WAC contains water quality standards.

Washington Department of Ecology (Ecology). The state agency that is responsible for developing, implementing, and enforcing many environmental protection laws and policies, including the state Clean Water Act and the Shoreline Management Act.

Watershed. The geographic region within which water drains into a particular river, stream, or body of water. A watershed includes hills, lowlands, and the body of water into which the land drains. Watershed boundaries are defined by ridges that separate the direction of waterflow.

Wetland or wetlands. Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. Wetlands may include those artificial wetlands intentially created from nonwetland areas created to mitigate conversion of wetlands.

Zoning Code. The code through which local governments regulate land use by ordinances.

APPENDIX C

WHERE TO FIND IT

ADOPT-A-BEACH

P.O. Box 21486, Seattle, WA 98111-3486
(206) 624-6013

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HYPERLINK– mailto:arch@lib.washington.edu

WASHINGTON DEPARTMENT OF ECOLOGY

Publications Office
P.O. Box 47600, Olympia, WA 98504
360-407-7472
HYPERLINK mailto:Ecypub@ecy.wa.gov

PEOPLE FOR PUGET SOUND

1402 Third Ave. #1200
Seattle, WA 98101
(206) 382-7007

PUGET SOUND WATER QUALITY AUTHORITY

P.O. Box 40900
Olympia, WA 98504
1-800-547-6863
(360) 407-7300

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Seattle, WA 98124-2255
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Seattle, WA 98101
(206) 553-1289

Information Access Branch,
Public Information Center
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Washington, DC 20460
(202) 260-5922

HYPERLINK mailto:r10-library@epa.gov

US GEOLOGICAL SURVEY (USGS)

1201 Pacific Avenue #600
Tacoma, WA 98402
(253) 428-3600

US DEPARTMENT OF AGRICULTURE/NATURAL RESOURCE CONSERVATION SERVICE

(formerly Soil Conservation Service)
935 Powell Ave. SW
Renton, WA 98055
(260) 764-3325

WASHINGTON DEPARTMENT OF COMMUNITY TRADE AND ECONOMIC DEVELOPMENT

Growth Management Division
906 Columbia Street Southwest
Post Office Box 48300
Olympia, WA 98504-8300
(360) 753-2222

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

600 North Capitol Way
Olympia, WA 98501-1091
(360) 902-2200 (agency reception)
(360) 902-2510 (non-game)
(360) 902-2515 (wildlife management)

WASHINGTON DEPARTMENT OF NATURAL RESOURCES (DNR)

Washington Natural Heritage Program
P.O. Box 47016
Olympia, WA 98504-7016
1(800) 527-3305

Resource Protection Division
P.O. Box 47037
Olympia WA 98504-7037
(360) 902-1300

WASHINGTON WETLANDS NETWORK (WETNET)

5031 University Way NE #207
Seattle, WA 98105
(206) 524-4570

WASHINGTON ENVIRONMENTAL COUNCIL

615 Second Avenue #380
Seattle, WA 98104
(206) 622-8103

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Citizen Planners Resource Center
http://www.webcpm.com/~pcj/welcome.html
National Research Council
Wetlands: Characteristics and Boundaries
http://bob.nap.edu/readingroom/books/wet/index.html
NOAA National Weather Service
http://www.nws.noaa.gov/
Planning Commissioners Journal
PlannersWeb: City & Regional Planning Resources
http://www.plannersweb.com/welcome.html
US Enviromental Protection Agency
http://www.epa.gov/
US Geological Survey
Water Resources of Washington State
http://wa.water.usgs.gov/
Washington Enviromental Council
http://www.greenwec.org/
Washington State Department of Ecology
http://www.wa.gov/ecology/
Washington State Department of Natural Resources
http://www.wa.gov/dnr/
Washington State Department of Fish
http://www.wa.gov.wdfw/
Washington Public Information Clearinghouse
http://olympus.dis.wa.gov:70/0/www/clear.html
Washington Wetlands Network
http://www.audubon.org/chapter/wa/wa/wetnet/index.html
Wetland Characteristics and Boundaries
http://xerxes.nas.edu/nap/online/wet

APPENDIX D

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