

PART 1

Selected Washington *Supreme Court* Decisions Pertaining To Land Use Law

In Reverse Chronological Order

80396-0 Futurewise v. Western Washington Growth Management Hearings Board. Filed July 31, 2008.

The trial court repeated the mistake of one errant hearings board when it held that the GMA controls procedures inside shorelines until new SMA plans are formulated and approved. The legislature clearly rejected that holding. Deciding as Ecology urges would contradict the clear language and intent of the legislature in ESHB 1933 and would add substantial costs to citizens and local governments. Ironically, legitimate conservation management efforts would be frustrated and encumbered. The decision of the trial court is reversed, and the decision of the Western Washington Growth Management Hearings Board upholding Anacortes is reinstated.

162 Wn.2d 825, TWIN BRIDGE MARINE PARK, LLC, ET AL., Respondents, v. THE DEPARTMENT OF ECOLOGY, Petitioner. No. 78462-1. Decided January 24, 2008.

J.M. JOHNSON, J. — While this case involves a protracted dispute between the parties, Department of Ecology and Twin Bridge Marine Park, LLC, the greater underlying issue is a dispute over regulatory authority between Ecology and Skagit County (County). Twin Bridge is a dry-storage marina that has been properly permitted by local, state, and federal agencies after years of litigation. At argument, Ecology conceded there were no continuing environmental concerns. However, development of Twin Bridge's property has exacerbated interpretive differences between these two powerful and competing governmental entities. The Shoreline Management Act of 1971 (SMA), chapter 90.58 RCW, defines state and local authority to regulate. When disagreements over property development arise between these two entities that exercise regulatory powers under the SMA, private citizens must not be forced to choose between conflicting edicts.

Where Ecology has reasonable notice of a final land use decision by the local permitting authority, it must pursue collateral attack of that decision through the Land Use Petition Act (LUPA), chapter 36.70C RCW. This is a well established principle of Washington law that gives closure and clarity to private property owners who wish to develop their land and to interested citizens. In the current case, Ecology's disagreement with the County over county permits cannot be visited on Twin Bridge, which properly relied on the County's final land use decision. Ecology had sufficient notice to resolve any dispute with the County in court, including an actual challenge filed by Anacortes under LUPA, but chose not to participate. We affirm both the trial court and the Court of Appeals.

162 Wn.2d 683, RAY BIGGERS ET AL., Respondents, v. THE CITY OF BAINBRIDGE ISLAND, Petitioner. No. 77150-2. Decided October 11, 2007.

J.M. JOHNSON, J. — Today, we review the Bainbridge Island City (City) Council's adoption of rolling moratoria, which imposed a multi-year freeze on private property development in shoreline areas. The City denied the processing of permit applications for more than three years. There is no state statutory authority for the City's moratoria or for these multiple extensions. Clearly, this usurpation of state power by the local government disregards article XVII, section 1 of the Washington Constitution, which expressly provides that shorelines are owned by the State, subject only to state regulation. The City is not authorized to adopt moratoria on shoreline development arising out of its police powers under article XI, section 11 of the Washington Constitution, which limits local government to regulation "not in conflict with general laws." Thus, we affirm both the trial court and the unanimous Court of Appeals decision invalidating the ordinances.

155 Wn.2d 1, EVELYNE GRUNDY, Petitioner, v. THURSTON COUNTY, et AL., Respondents . No. 73906-4. Decided July 28, 2005.

IRELAND, J.* - In this case, we consider whether a private nuisance claim brought by Evelyne Grundy, who alleges seawater damaged her property because her neighbors raised the height of their seawall, should be dismissed in light of the common enemy doctrine. We reverse the Court of Appeals dismissal of her private nuisance claim, and we hold that the common enemy doctrine does not apply to seawater.

154 Wn.2d 224, THE QUADRANT CORPORATION , Petitioner , v. THE CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD , et AL ., Respondents . KING COUNTY , Petitioner , v. THE CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD , et AL ., Respondents . FRIENDS OF THE LAW , Petitioner , v. KING COUNTY , et AL ., Respondents . No. 75076-9. Decided May 5, 2005.

[1] Counties - Land Use Controls - Growth Management Act - Hearings Board Decision - Judicial Review - Statutory Provisions. The Administrative Procedure Act (chapter 34.05 RCW) governs judicial review of growth management hearings board decisions.

[2] Administrative Law - Judicial Review - Question of Law - De Novo Review - Deference to Agency - In General. Under the error of law standard of RCW 34.05.570 (3)(d) for judicial review of an agency adjudication, issues of law are reviewed by a court de novo.

[3] Counties - Land Use Controls - Growth Management Act - Planning Policies - Discretion - Deference by Reviewing Agencies. Under the Growth Management Act (chapter 36.70A RCW), planning jurisdictions have broad discretion in adapting the requirements of the act to local realities. Local planning actions that are consistent with the goals and requirements of the act are entitled to a high degree of deference by the growth management hearings boards and the courts that exceeds the

deference usually afforded to agency actions upon review under the Administrative Procedure Act (chapter 34.05 RCW). A board ruling that fails to apply the more deferential standard of review mandated by the act is not entitled to deference by a reviewing court.

[4] Statutes - Construction - Authority - Final Authority - Supreme Court. On questions of statutory interpretation, the Supreme Court is the final arbiter.

[5] Statutes - Construction - Legislative Intent - Statutory Language - Context. The primary goal in interpreting a statute is to ascertain and give effect to the legislature's intent. To discern the legislative intent of a statute, a court begins with the statute's plain language and ordinary meaning but also looks to the applicable legislative enactment as a whole, harmonizing its provisions by reading them in context with related provisions and the overall statute.

[6] Statutes - Construction - Meaning of Words - Absence of Statutory Definition - Common Usage - Resort to Dictionary. A word in a statute that the statute does not define is given its common meaning as may be determined by referring to a dictionary.

[7] Statutes - Construction - Meaning of Words - Absence of Statutory Definition - Common Usage - Context. In determining the meaning of a word used in a statute that the statute does not define, a court may, in addition to considering the dictionary definition of the word, consider the subject matter involved, the context in which the word is used, and the purpose of the statute.

[8] Counties - Land Use Controls - Growth Management Act - Urban Growth Area - Territory Outside of City - "Characterized by Urban Growth" - Future Development - Effect. Under the Growth Management Act (chapter 36.70A RCW), a county may consider vested development applications and existing development rights in determining whether an area "already is characterized by urban growth" such as to be designated an urban growth area. The county is not necessarily limited to the presently existing built environment in determining whether an area "already is characterized by urban growth."

[9] Counties - Land Use Controls - Growth Management Act - Urban Growth Area - Fully Contained Community - Designation - Effect. A fully contained community designation provides counties with an alternative means of designating an urban area and is an exception to the general locational constraints placed on urban growth areas by the Growth Management Act (chapter 36.70A RCW).

[10] Counties - Land Use Controls - Growth Management Act - Urban Growth Area - Fully Contained Community - What Constitutes - Statutory Criteria. A "fully contained community" is a planning designation under RCW 36.70A.110 (1) and RCW 36.70A.350 of the Growth Management Act that may be applied to an area if the criteria set forth in RCW 36.70A.350 are met. There are no requirements to defining an area as a "fully contained community" other than those set forth in RCW 36.70A.350 .

[11] Counties - Land Use Controls - Growth Management Act - Urban Growth Area - Fully Contained Community - What Constitutes - Local Designation. A community may qualify as "fully contained" within the meaning of RCW 36.70A.110 (1) and RCW 36.70A.350 if the development that may be allowed therein complies with the criteria set forth in RCW 36.70A.350 .

[12] Counties - Land Use Controls - Growth Management Act - Urban Growth Area - Fully Contained Community - Fully Contained in Fact - Necessity. Nothing in the Growth Management Act (chapter 36.70A RCW) requires that a "fully contained community" be fully contained in fact.

147 Wn.2d 440, SAMUEL's FURNITURE, INC., et AL., Petitioners, v. THE DEPARTMENT OF ECOLOGY, Respondent. No. 71181-0. Decided October 3, 2002.

BRIDGE, J. - Petitioners Samuel's Furniture, Inc., and Jaffa Holdings, Inc. (Samuel's) seek reversal of a Court of Appeals opinion in favor of the Department of Ecology (Ecology). Samuel's contends that Ecology was required to appeal the City of Ferndale's (City) decision to issue fill and grade and building permits and to rescind a stop work order because Samuel's proposed construction project was not within the shoreline jurisdiction of the Shoreline Management Act of 1971 (SMA), chapter 90.58 RCW, under the rules established by the Land Use Petition Act (LUPA), chapter 36.70C RCW. The Court of Appeals held that because Ecology had authority to review local government decisions to enforce the SMA, Ecology was not required to file a LUPA petition in order to challenge the City's decision. We hold that Ecology is required to file a timely LUPA petition in order to challenge a local government's decision to allow a development project when the local government has determined that the project is not within the shoreline jurisdiction.

141 Wn.2d 185, ASSOCIATION OF RURAL RESIDENTS, ET AL., Respondents, v. KITSAP COUNTY, ET AL., Petitioners. No. 68027-2. Decided July 20, 2000.

[1] Counties - Land Use Controls - Growth Management Act - Interim Urban Growth Area - Administrative Review - Remand - Expiration - Effect. An interim urban growth area designation subject to an order of remand by a growth management hearings board on the basis that the area designation does not comply with the planning policies of the Growth Management Act (Chapter 36.70A RCW) ceases to have any force or effect if the period of remand expires without any action having been taken on the remand order. Under RCW 36.70A.300(4), a noncomplying interim urban growth area designation remains in effect only during the period of remand.

[2] Building Regulations - Land Use Regulations - Vested Rights - What Constitutes. The concept of "vesting" generally refers to the notion that a land use application, under proper conditions, is considered under the land use statutes and ordinances in effect at the time the application was submitted.

[3] Plats - Application - Vested Rights - Scope. The vesting doctrine, as codified in RCW 58.17.033, vests the right to develop land, not merely to divide it, under the land use regulations in effect at the time the plat application was submitted.

[4] Zoning - Rezoning - Planned Unit Development - Vested Rights - Submission of Preliminary Plat Application. The submission of a completed preliminary plat application together with an application for

approval of a proposed planned unit development creates a vested right to have the entire application, including the application for the planned unit development, considered under the statutes and ordinances in effect on the date of submission.

[5] Environment - SEPA - Mitigated Determination of Nonsignificance - Review - Standard of Review. A mitigated determination of nonsignificance made pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) is reviewed under the clearly erroneous standard. A determination is not clearly erroneous unless the reviewing court, after examining the entire record and considering all the evidence in the case in light of the public policy contained in the Act, is left with a definite and firm conviction that a mistake has been committed.

[6] Environment - SEPA - Mitigated Determination of Nonsignificance - Review - Appellate Review - Remand. When an appellate court determines that a superior court applied the wrong legal standard in reviewing a mitigated determination of nonsignificance made pursuant to the State Environmental Policy Act (Chapter 43.21C RCW), the proper remedy is to remand the case to the superior court so that it may apply the correct legal standard.

139 Wn.2d 1, LEONARD HALVERSON, ET AL., Respondents, v. SKAGIT COUNTY, Appellant, THE STATE OF WASHINGTON, ET AL., Respondents. No. 66171-5. Decided September 9, 1999.

[1] Levees and Flood Control - Maintenance, Repair, or Improvement of Levees - Liability for Flooding - Counties - Proximate Cause. A county's maintenance, repair, and improvement of levees owned by independent diking districts was not a proximate cause of levee-induced flooding where the county did not cause the levee system to come into existence.

[2] Counties - Flood Control - Statutory Immunity - Scope - Constitutional Violation. The immunity granted counties by RCW 86.12.037 for acts or omissions relating to flood control activities applies unless the county violates constitutional protections.

[3] Eminent Domain - Inverse Condemnation - Elements - Causation - Proximate Cause - Acting in Concert. The "acting in concert" theory of joint liability does not apply to inverse condemnation actions. A taking does not occur unless government activity was the direct or proximate cause of a landowner's loss.

[4] Waters - Diking Districts - Nature - County Control. Diking districts are separate and distinct corporations that conduct their activities free from the control of county authorities.

[5] Waters - Surface Water - Common Enemy Rule - In General. The common enemy doctrine provides that surface water is common enemy against which anyone may defend themselves, even though by so doing injury may result to others.

[6] Waters - Surface Water - Common Enemy Rule - Over-bank Floodwaters. Overbank floodwaters that become severed from a river's main current are "surface waters" for purposes of the common enemy

doctrine. Landowners may build levees to repel such waters back into the river channel without incurring liability for damages to the property of others.

[7] Waters - Surface Water - Common Enemy Rule - Altering Natural Flow. The common enemy doctrine does not protect landowners who artificially collect and discharge surface waters upon adjoining lands in quantities greater than or in a manner different from the waters' natural flow.

135 Wn.2d 678, JOHN WEDEN II, ET AL., Respondents, v. SAN Juan COUNTY, ET AL., Appellants. No. 64776-3. Decided July 9, 1998.

[1] Appeal - Assignments of Error - Necessity - In General. An appellate court will not review a trial court ruling if no error is assigned to it.

[2] Judgment - Summary Judgment - Review - Role of Appellate Court. An appellate court reviews a summary judgment by engaging in the same inquiry as the trial court under CR 56(c).

[3] Municipal Corporations - Ordinances - Validity Presumption - In General. A regularly enacted ordinance not involving a fundamental right or a suspect class is presumed to be constitutional.

[4] Municipal Corporations - Powers - Police Power Constitutional Scope. The police power granted to local governments by Const. art. XI, § 11 is as ample within its limits as the Legislature's police power and may be exercised absent express legislative sanction. The broad scope of the Const. art. XI, § 11 police power encompasses all measures local in nature that bear a reasonable and substantial relation to promoting the public health, safety, and welfare and that do not conflict with the general laws.

The considerable latitude a local government has in exercising its Const. art. XI, § 11 police power includes the discretion to determine what the interests of the public require and what measures are necessary to protect those interests.

[5] Municipal Corporations - Ordinances - Validity - Police Power - Test. A local police power ordinance satisfies the requirements of Const. art. XI, § 11 if (1) the subject matter of the ordinance is local, (2) the ordinance does not conflict with a general law, and (3) the ordinance constitutes a reasonable exercise of the Const. art. XI, § 11 police power.

[6] Municipal Corporations - Ordinances - Validity - Police Power - Question of Law or Fact - Review. The validity of a local ordinance as an exercise of the Const. art. XI, § 11 police power is a question of law that is reviewed de novo.

[7] Municipal Corporations - Ordinances - Validity - Burden of Proof - In General. A party challenging the validity of a local ordinance has the burden of proving that it is invalid.

[8] Municipal Corporations - Ordinances - Validity Preemption - Test. A local law is not preempted by state law unless state law preempts the field of regulation addressed by the local law, leaving no room

for concurrent jurisdiction, or the local law and state law conflict to such a degree that they cannot coexist.

[9] Municipal Corporations - Ordinances - Validity Conflict With State Law - Test. A local ordinance does not conflict with a statute unless it permits that which the statute forbids or forbids that which the statute permits.

[10] Municipal Corporations - Ordinances - Validity Conflict With State Law - Harmonization. A local ordinance and a statute do not conflict if they can be harmonized.

[11] Municipal Corporations - Ordinances - Validity Conflict With State Law - Legislative Intent. A court will not interpret a statute so as to deprive a local government of the power to enact legislation regarding a particular subject unless that clearly is the Legislature's intent.

[12] Waters - Boats - Safety Regulation - Statutory Provisions - Scope. RCW 88.12, which governs the regulation of recreational vessels and provides for the safe operation of motor boats, does not grant permission to operate any kind of motorized watercraft on all waters of the state.

[13] Waters - Boats - Vessel Registration - Statutory Provisions - Scope. RCW 88.02, the vessel registration statute, was enacted to raise revenue and create a title system for vessels; it does not grant permission to operate any kind of motorized watercraft on all waters of the state.

[14] Municipal Corporations - Ordinances - Validity Conflict With State Law - State-Licensed Activity - Local Prohibition. The fact that an activity may be licensed under state law does not necessarily mean that the activity must be permitted under local law.

[15] Judgment - Summary Judgment - Review - Constitutional Issues. An appellate court reviewing a summary judgment may resolve any constitutional issue briefed and argued by the parties on appeal whether or not the issue was addressed by the trial court.

[16] Environment - Shoreline Management - Watercraft Restrictions - Local Regulation. Local restrictions on the use of motorized watercraft in near-shore areas are generally consistent with the aims and policies of the Shoreline Management Act of 1971 (RCW 90.58).

[17] Parks and Recreation - Marine Recreation - Statutory Provisions - Local Restriction on Watercraft - Conflict. Neither the Marine Recreation Land Act of 1964 (RCW 43.99) nor its implementing regulations (WAC Title 286) necessarily conflict with a local restriction on the use of motorized watercraft on state waters.

[18] Waters - Public Access - Public Trust Doctrine - Violation - Test. The public trust doctrine, which protects public ownership interests in certain uses of navigable waters and underlying lands, including navigation, commerce, fisheries, recreation, and environmental quality - and which prohibits the State from disposing of its interest in the waters of the state in such a way that the public's right of access is substantially impaired if the overall public interest is not served thereby - is not violated unless the State

gives up its right of control over a public property interest it has been entrusted to protect and the public interest is either not served or impaired by the State's surrender of control.

[19] Waters - Public Access - Public Trust Doctrine - Local Restriction on Watercraft - Conflict. The public trust doctrine, which protects public ownership interests in certain uses of navigable waters and underlying lands, including navigation, commerce, fisheries, recreation, and environmental quality - and which prohibits the State from disposing of its interest in the waters of the state in such a way that the public's right of access is substantially impaired if the overall public interest is not served thereby - does not necessarily prohibit local jurisdictions from enacting laws restricting the use of motorized watercraft on state waters.

[20] Waters - Boats - Motorized Personal Watercraft - Local Regulation - Validity - Conflict With State Law. A local government may restrict the use of motorized personal watercraft on state waters without conflicting with RCW 88.12 (governing the regulation of recreational vessels), RCW 88.02 (the vessel registration statute), RCW 90.58 (the Shoreline Management Act of 1971), RCW 43.99 and WAC Title 286 (the Marine Recreation Land Act of 1964 and its implementing regulations), or the public trust doctrine.

[21] Municipal Corporations - Ordinances - Validity - Police Power - Reasonableness - Test. A local ordinance constitutes a reasonable exercise of the Const. art. XI, § 11 police power if (1) the ordinance promotes the health, safety, peace, education, or welfare of the people and (2) the requirements of the ordinance bear a reasonable and substantial relationship to the accomplishment of its purposes.

[22] Municipal Corporations - Ordinances - Validity - Police Power - Reasonableness - Wisdom of Ordinance. In determining if a local ordinance constitutes a reasonable exercise of the Const. art. XI, § 11 police power, a court will not substitute its judgment for that of the local legislative authority with respect to the wisdom, necessity, or expediency of the ordinance.

[23] Municipal Corporations - Ordinances - Validity - Police Power - Reasonableness - Review - Standard of Review. A local ordinance will be upheld on judicial review as a reasonable exercise of the Const. art. XI, § 11 police power if the ordinance is not clearly unreasonable, arbitrary, or capricious.

[24] Municipal Corporations - Ordinances - Validity - Police Power - Facts in Support. For purposes of determining if a local ordinance promotes the health, safety, peace, education, or welfare of the people and constitutes a reasonable exercise of the Const. art. XI, § 11 police power, if a conceivable set of facts exists that would justify the ordinance, such facts are presumed to exist and it is presumed that the statute was enacted with reference to those facts.

[25] Municipal Corporations - Ordinances - Validity - Police Power - "Localness" of Enactment - Incidental Effect Outside Jurisdiction. For purposes of the Const. art. XI, § 11 police power, a local ordinance is "local" in scope if its effect outside the local jurisdiction's boundary is only incidental.

[26] Waters - Boats - Motorized Personal Watercraft - Local Regulation - Validity - Police Power. Under the police power of Const. art. XI, § 11, a local government may single out and restrict the use of motorized personal watercraft on state waters lying within the boundaries of the local jurisdiction.

[27] Municipal Corporations - Ordinances - Validity - Police Power - Substantive Due Process - Undue Oppression. A local ordinance enacted under the Const. art. XI, § 11 police power does not violate substantive due process if it is not unduly oppressive on persons regulated thereunder. In determining if a local ordinance is unduly oppressive, a court must balance the public's interest against those of the persons regulated. The purpose of the balancing test is to ensure that selected individuals are not forced to ~ shoulder an economic burden that in justice and fairness the public should rightfully bear. In analyzing a substantive due process challenge to a local ordinance, a court considers the nature of the harm sought to be avoided by the ordinance, the availability and effectiveness of less drastic protective measures, and the economic losses suffered by the persons regulated. A local ordinance is not unduly oppressive if it regulates only those activities that are directly responsible for the harm sought to be prevented.

[28] Waters - Boats - Motorized Personal Watercraft - Local Regulation - Validity - Substantive Due Process. A local jurisdiction may restrict the use of motorized personal watercraft on state waters without necessarily violating the substantive due process rights of motorized personal watercraft owners or users.

[29] Municipal Corporations - Ordinances - Validity - Vagueness - Test. A local ordinance is not unconstitutionally vague unless (1) it fails to define prohibited conduct with sufficient definiteness that ordinary people can understand what conduct is proscribed or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

[30] Municipal Corporations - Ordinances - Validity - Vagueness - Sufficient Definiteness. For purposes of a vagueness challenge to a local ordinance, the ordinance is sufficiently definite if persons of common intelligence can understand what the ordinance proscribes; the due process clause does not demand impossible standards of specificity.

[31] Municipal Corporations - Ordinances - Validity - Vagueness - Ascertainable Standards of Guilt. A local ordinance is not unconstitutionally vague merely because it may require a subjective evaluation by a law enforcement officer to determine whether it has been violated; the ordinance must invite an inordinate amount of law enforcement discretion before it will be struck down as void for vagueness.

[32] Municipal Corporations - Ordinances - Validity - Vagueness - Facial Invalidity - No First Amendment Issue. A claim that a local ordinance is unconstitutionally vague is evaluated in light of its application to the particular facts of the case if no First Amendment rights are implicated. Absent a First Amendment interest, a court may not consider the facial vagueness of an ordinance (i.e., the court may not examine hypothetical situations at the periphery of the ordinance's scope).

[33] Judgment - Summary Judgment - Review - Disposition - Cross Motions. When an appellate court reverses a summary judgment entered by a trial court on cross motions for summary judgment, the appellate court may grant summary judgment in favor of the party that prevailed on appeal.

125 Wn.2d 196, RICHARD F. BUECHEL, Petitioner, v. THE DEPARTMENT OF ECOLOGY, Respondent. [No. 61039-8. November 10 1994.

[1] Environment – Shoreline Management – Judicial Review – Clearly Erroneous – What Constitutes. A reviewing court will not reverse a decision of the Shorelines Hearings Board under the clearly erroneous standard of former RCW 34.04.130 unless it is definitely and firmly convinced that a mistake has been made in light of the policies of the Shoreline Management Act of 1971 (RCW 90.58). The court may not substitute its judgment for that of the Board.

[2] Environment – Shoreline Management – Judicial Review – Arbitrary and Capricious – What Constitutes. A decision of the Shorelines Hearings Board is not arbitrary and capricious under former RCW 34.04.130 unless it is willful and unreasoning action in disregard of the facts and circumstances. When there is room for two opinions, a decision honestly reached upon due consideration is not arbitrary and capricious.

[3] Environment – Shoreline Management – Administrative Review – Nature – Deference to Local Government. The Shorelines Hearings Board's review of local land use decisions is de novo. The local government's decision is not entitled to deference.

[4] Environment – Shoreline Management – Judicial Review – Appellate Review – Decision Subject to Review. Appellate review of a shoreline land use decision is of the decision of the Shorelines Hearings Board, not the decision of the local government or the trial court.

[5] Environment – Shoreline Management – Judicial Review – Record. Judicial review of a decision of the Shorelines Hearings Board is based on the record made before the Board.

[6] Environment – Shoreline Management – Judicial Review – Deference to Board. When reviewing a decision of the Shorelines Hearings Board, a court will give due deference to the specialized knowledge and expertise of the Board.

[7] Environment – Shoreline Management – Statutory Provisions – Construction. The Shoreline Management Act of 1971 (RCW 90.58) is broadly construed so as to protect the state shorelines as fully as possible.

[8] Environment – Shoreline Management – Judicial Review – Burden of Proof. A landowner aggrieved by a local government's denial of a substantial development permit under the Shoreline Management Act of 1971 (RCW 90.58) has the burden of proof in the proceedings to review the denial.

[9] Environment – Shoreline Management – Master Program – Variance – Compliance With Local Ordinance. A landowner seeking a variance from the requirements of a shorelines master program must

comply with the requirement of a county ordinance if such requirements are stricter than those established by WAC 173-14-150.

[10] Building Regulations – Land Use Regulations – Reasonable Use of Land – Recreational Use. For purposes of determining whether land use regulations have left a landowner with no reasonable use of the property, land may have some economic value when the uses allowed are recreational.

[11] Building Regulations – Land Use Regulations – Reasonable Use of Land – Factors. When determining what constitutes a reasonable use of a particular parcel of land, a court may consider its size, location, and physical attributes.

[12] Building Regulations – Land Use Regulations – Reasonable Use of Land – Regulations at Time of Purchase. The zoning and other land use regulations in effect when a landowner purchased the property are relevant to, but not dispositive of, the issue of what constitutes a reasonable use of the property.

[13] Environment – Shoreline Management – Master Program – Variance – Cumulative Environmental Impact of Development. In deciding whether to grant a variance from the requirements of a shoreline master program, the Shorelines Hearings Board may consider the cumulative environmental impact of development.

[14] Environment – Shoreline Management – Administrative Review – Prior Inconsistent Decision – Not Appealed to Board. A prior land use decision that was never appealed to the Shorelines Hearings Board has no effect on the Board's application of existing regulations to different property.

118 Wn.2d 801, P.2d 549, COWICHE CANYON CONSERVANCY v. BOSLEY. No. 56505-8. April 16, 1992.

[1] Environment – Shoreline Management – Violation – Action for Damages – Standing. A private person lacks standing to bring suit on that person's own behalf for damages for a violation of the Shoreline Management Act of 1971 under RCW 90.58.230 if the person has no right, title, or interest in the affected property or in property adjacent to the affected property.

[2] Appeal – Findings of Fact – Failure To Assign Error – Effect. Unchallenged findings of fact are accepted as verities on appeal.

[3] Appeal – Assignments of Error – Argument – Necessity – In Brief. An assignment of error is waived if the party asserting it has not argued the point in its opening brief.

[4] Appeal – Review – Issues First Raised in Reply Brief – In General. An issue raised and argued for the first time in a reply brief will not be considered by a reviewing court.

[5] Appeal – Assignments of Error – Authority – Reference to Record – Necessity. If the grounds for an argument on appeal are not supported by any reference to the record or any citation of authority, the argument will not be considered.

[6] Environment – Shoreline Management – Violation – Action for Damages – Class Action – Minimum Requirements. A plaintiff may not maintain an action under the Shoreline Management Act of 1971 (RCW 90.58) on behalf of others unless the CR 23 requirements for a class action are met.

[7] Judgment – Summary Judgment – Review – In General. When reviewing a summary judgment, an appellate court engages in the same inquiry as the trial court and applies the standard set forth in CR 56(c) to determine if there are any issues of material fact and whether the moving party is entitled to a judgment as a matter of law. The facts and all the reasonable inferences that can be drawn from the facts are viewed in the light most favorable to the nonmoving party.

[8] Environment – Shoreline Management – Substantial Development Permit – Antecedent Requirements. Before there can be a "substantial development" for which a permit is required under RCW 90.58.140(2) of the Shoreline Management Act of 1971, there must first be a "development" as defined by RCW 90.58.030(3)(d).

[9] Statutes – Construction – Legislative Intent – In General. The objective of statutory construction is to ascertain the intent of the Legislature.

[10] Statutes – Construction – Meaning of Words – Absence of Statutory Definition. Generally, if a term is not defined in a statute, it should be given its plain and ordinary meaning unless a contrary legislative intent is indicated.

[11] Environment – Shoreline Management – "Development" – What Constitutes – Destruction. For purposes of the Shoreline Management Act of 1971 (RCW 90.58), the total removal or destruction of a structure is not encompassed by the term "exterior alteration of structures" as that term is used in RCW 90.58.030(3)(d), which defines "development" as including the exterior alteration of structures.

[12] Statutes – Construction – Administrative Construction – Unambiguous Statute. An administrative agency's construction of a statute is not entitled to great weight unless the statute is ambiguous.

[13] Statutes – Construction – Ambiguity – In General. A statute is not rendered ambiguous simply because the words used are not defined in the statute.

[14] Statutes – Construction – Meaning of Words – Question of Law or Fact. The determination of the meaning of a statutory term is a question of law; it is not established by use of trial testimony.

[15] Statutes – Construction – Administrative Construction – Adoption and Application of Policy. Before great weight is given by a court to an agency's interpretation of an ambiguous statute, the agency must show that it has adopted the proffered interpretation as a matter of agency policy.

[16] Statutes – Construction – Administrative Construction – Conflict With Statute. A court will not accord deference to an administrative agency's interpretation of a statute if that interpretation conflicts with the terms of the statute itself.

[17] development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter . . .", does not require that a permit be obtained before a project is undertaken. A permit is required only for those developments that qualify as substantial developments.

[18] Appeal – Findings of Fact – Review – In General. Findings of fact supported by substantial evidence (i.e., evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise) are verities on appeal.

[19] Appeal – Assignments of Error – Argument – Basis in Record – Specific Citation – Necessity. A party on appeal must specifically identify the location in the record of where evidence relevant to the party's argument may be found; it is not the duty of the reviewing court to search the record to discover that evidence.

[20] Environment – Shoreline Management – Violation – Action for Damages – Attorney Fees. Attorney fees may be awarded to a prevailing defendant under RCW 90.58.230 of the Shoreline Management Act of 1971. (Ritchie v. Markley, 23 Wn. App. 569, is overruled insofar as it is inconsistent.)

[21] Costs – Attorney Fees – On Appeal – Award at Trial. If a statute allows an award of attorney fees at trial, an appellate court has the inherent discretion to also award attorney fees on appeal.

109 Wn.2d 621, 747 P.2d 1062. The Orion Corporation, Respondent, v. The State of Washington, et al, Appellants, Padilla Bay Associates, Respondent. NO.: 52165-4, 52529-3 FILE DATE: December 17, 1987.

[1] Eminent Domain - Inverse Condemnation - Regulatory Taking - Judicial Review - Permit Application - Necessity. Judicial review of administrative regulation of real property alleged to constitute a taking without compensation is not dependent on the aggrieved party's submission of permit applications if there is no possibility that permits for any economically beneficial use would be granted.

[2] Parties - Joinder - Failure To Join - Inability To Join All Parties. An inability to join all the parties to a dispute in either state or federal court provides a justification in "equity and good conscience" under CR 19(b) for permitting the action to proceed in state court without the joinder of an indispensable party.

[3] Eminent Domain - Inverse Condemnation - Standing - Optionee. Whether an owner of an unexercised option to purchase property has a sufficient interest to bring an inverse condemnation action depends on the equities and circumstances involved, including the effect of the taking on the optionee's right to exercise the option.

[4] Waters - Tidelands - State Ownership - Public Trust - Effect. Tidelands acquired from the State remain subject to the State's sovereignty and dominion. Such tidelands may not be used or developed in a manner which substantially impairs the public's right of navigation, including recreational navigation, fishing, and other incidental uses.

[5] Building Regulations - Land Use Regulations - Scope of Liability - Local Government as Agent of State. When local land use regulations are adopted under the direction and control of the State and do not take effect until they are approved by the State, the local government is the agent of the State and the State alone is liable for any damages resulting from the regulations.

[6] Eminent Domain - Inverse Condemnation - Elements - Power To Condemn. A governmental entity may be liable for paying compensation under the theory of inverse condemnation when a department or agency of the entity causes a de facto taking of property even though the department or agency is not specifically empowered to exercise eminent domain.

[7] Eminent Domain - Inverse Condemnation - Regulatory Taking - State Constitution. A land use regulation requires the payment of just compensation for the taking of private property under Const. art. 1, 16 only if the purpose and effect of the regulatory interference with the use of the property goes beyond protecting the public from harm under the police power to actually enhancing a publicly owned right in land.

[8] Eminent Domain - Inverse Condemnation - Regulatory Taking - Federal Constitution. A land use regulation does not require the payment of just compensation for the taking of private property under U.S. Const. amend. 5 if it substantially serves the legitimate public purpose of prohibiting uses of property injurious to the PUBLIC interest in health, the environment, or the fiscal integrity of the community.

[9] Eminent Domain - Inverse Condemnation - Regulatory Taking - Proximate Cause. No regulatory taking occurs unless the regulation was the proximate cause of the landowner's inability to adapt his land to a use which is reasonably profitable and legally permissible.

[10] Eminent Domain - Inverse Condemnation - Regulatory Taking - Government's Purchase Offer - Effect. A land use regulation does not effect an unconstitutional taking of land if the State, not intending to circumvent eminent domain procedures, offers to purchase the land for a price which is just in light of the fair market value of the property.

[11] Eminent Domain - Inverse Condemnation - Regulatory Taking - Damages - Temporary Taking. When the effect of a regulatory taking can be cured by amending or rescinding the regulation, the landowner is entitled to recover the leasehold value of the land for the period during which the regulation was in effect.

[12] Eminent Domain - Inverse Condemnation - Physical Invasion - Elements - Governmental Trespass. Inverse condemnation by physical invasion requires a chronic and unreasonable pattern of behavior by the government constituting or causing a trespass.

[13] Civil Rights - Eminent Domain - Inverse Condemnation - Regulatory Taking - Deprivation of Civil Rights - Accrual of Cause. A claim for violation of civil rights under 42 U.S.C. 1983 arising from a regulatory taking does not accrue until the aggrieved landowner fails to obtain just compensation in a previous inverse condemnation action.

109 Wn.2d 91, 743 P.2d 265. Clam Shacks of America, Inc., Petitioner, v. Skagit County, et al, Respondents. NO.: 53228-1 FILE DATE: October 1, 1987.

[1] Environment - Shoreline Management - Statutory Provisions - Scope. The Shoreline Management Act of 1971 (RCW 90.58) authorizes local governments to regulate shoreline activities through conditional use permits even though they do not qualify as "developments" as defined by RCW 90.58.030(3)(d) and (e).

107 Wn.2d 801, 733 P.2d 56. Kitsap County, Appellant, v. The State of Washington, et al, Respondents, E. Shippen Willing, Appellant. NO.: 53220-6 FILE DATE: March 5, 1987.

[1] Administrative Law - Judicial Review - Hearing Board - Test. In reviewing the decision of an administrative hearing panel the courts apply the clearly erroneous test of RCW 34.04.130(6)(e) to determine if the decision is clearly erroneous in view of the entire record as submitted and the public policy contained in the applicable statute.

[2] Administrative Law - Delegation of Powers - By Agency - What Constitutes. An administrative hearing panel does not improperly delegate its obligation to consider relevant information when its decision directs that information be gathered and submitted to another entity, so long as the information is not needed as a basis for the instant decision but is intended for possible future use.

107 Wn.2d 662, 732 P.2d 989. Benella Caminiti, et al, Petitioners, v. Brian J. Boyle, et al, Respondents. NO.: 52459-9 FILE DATE: February 12, 1987.

[1] Waters - Tidelands - State Ownership - Constitutional Provisions. The state ownership of tidelands asserted in Const. art. 17, 1 is the sovereignty and dominion aspect of ownership that is separate and distinct from the title aspect of ownership. The sovereignty and dominion aspect of tideland ownership is held by the State in trust for the public and cannot be conveyed or given away except where such conveyance promotes the interest of the public or does not substantially impair the public interest in the remaining tidelands.

[2] Waters - Tidelands - State Ownership - Use for Private Docks - Validity. RCW 79.90.105, which permits owners of residential property abutting state-owned tidelands to install and maintain private recreational docks on the tidelands without payment to the State, does not violate the state sovereignty and dominion over all tidelands asserted in Const. art. 17, 1, the Const. art. 8, 5 prohibition against lending of state credit, or the equal protection clauses of the state and federal constitutions.

[3] Statutes - Validity - Presumption - Burden of Proof. A statute is presumed to be constitutional and the burden of proof is on a party challenging the statute.

[4] Constitutional Law - Equal Protection - Classifications - Rational Relationship - In General. Legislative classifications not involving a suspect class nor a fundamental right are valid if there is a rational basis for distinguishing between those within and without the class.

103 Wn.2d 720, 696 P.2d. Nisqually Delta Association, et al, Appellants, v. The City of DuPont, et al, Respondents. NO.: 49409-6 FILE DATE: March 7, 1985.

[1] Administrative Law and Procedure - Judicial Review - Question of Fact - Clearly Erroneous Test. A court reviewing an administrative decision applies the clearly erroneous standard of RCW 34.04.130(6)(e) by examining the administrative record and, giving deference to the expertise of the agency, determining whether it is firmly convinced that a mistake has been made.

[2] Environment - Permits - Notice - Sufficiency. Notice of permit applications for a project affecting the environment is adequate if it fairly and accurately informs the parties who may be affected of the nature and character of the project so that they can intelligently prepare for the hearing.

[3] Environment - Permits - Notice - Adjoining Jurisdiction. Notice of a pending permit application need not be given outside the jurisdiction in which the project is to be located unless the project would have a serious impact on an adjoining jurisdiction and that impact is not discussed in the environmental impact statement.

[4] Environment - Shoreline Management - Master Program - Construction. A local shorelines master program developed pursuant to RCW 90.58.080 is interpreted in the same manner as a statute.

[5] Statutes - Construction - Legislative Intent - Considered as a Whole. A statute is construed as a whole with all its parts being harmonized so as to give effect to the intent of the enacting body and to avoid inconsistent and absurd results.

[6] Administrative Law and Procedure - Hearing - Evidence - Hearsay - Discretion of Agency. The admission of relevant hearsay evidence at an administrative hearing is within the agency's discretion. The decision depends upon whether there are circumstances indicating the reliability of the evidence and whether it is the best evidence reasonably available.

103 Wn.2d 441, 693 P.2d 1369. The Orion Corporation, Respondent, v. The State of Washington, et al, Petitioners. NO.: 49941-1 FILE DATE: January 11, 1985.

[1] Action - Standing - In General. A party who has a protectable interest which has been or is about to be invaded by another has standing to pursue an action.

[2] Administrative Law and Procedure - Judicial Review - Exhaustion of Administrative Remedies - Necessity. A party is not required to exhaust administrative remedies before seeking judicial relief when such administrative action would be futile.

[3] Administrative Law and Procedure - Judicial Review - Exhaustion of Administrative Remedies - Futile Effort - Inadequate Remedy. Administrative remedies are futile if the desired result is not legally or factually possible under policy determinations already made by an agency.

[4] Environment - Policy Determinations - Permit Application - Necessity. When environmental policy decisions predetermine that use or development permit applications will not be approved, applying for such permits is a vain and useless act and is not required before seeking other relief.

[5] Evidence - Opinion Evidence - Expert Testimony - Conclusions of Law - Discretion of Court. The consideration of expert testimony is a matter addressed to the discretion of the trial court. When the court is functioning as the trier of fact, it may permit such testimony, even if it includes conclusions of law, under the presumption that the court will disregard such conclusions in evaluating the testimony.

99 Wn.2d 386, 662 P.2d 381. Kitsap County, Respondent, v. The Department of Natural Resources, et al, Appellants, E. Shippen Willing, Respondent. NO.: 48726-0 FILE DATE: April 21, 1983.

[1] Environment - SEPA - Impact Statement - Adequacy - Standing To Challenge - Issuer of Permit. An agency charged with issuance of a substantial development permit under the shoreline management act cannot challenge the adequacy of an environmental impact statement relating to such issuance if such agency failed to respond to a request to comment on the statement in draft form.

[2] Environment - Shoreline Management - Review - Failure To Raise Issue in Administrative Hearing. An issue which was not raised before the Shorelines Hearings Board may not be raised for the first time in a superior court review of the Board's decision.

93 Wn.2d 742, 613 P.2d 115. Skagit County, et al, Respondents, v. The Department of Ecology, et al, Appellants. NO.: 46152 FILE DATE: June 19, 1980.

[1] Environment - Shoreline Management - Development Permit - Conflict With Master Program - Approval of State - Necessity. In the absence of approval by the Department of Ecology, a local government may not grant a substantial development permit for use of a shoreline area in a manner not authorized by its master program adopted pursuant to the Shoreline Management Act of 1971.

[2] Administrative Law and Procedure - Judicial Review - Clearly Erroneous Test - In General. A reviewing court will uphold an administrative determination under the clearly erroneous standard unless it has a definite and firm conviction that a mistake has been made.

[3] Administrative Law and Procedure - Administrative Discretion - Abuse - What Constitutes. A decision of an administrative agency constitutes an abuse of discretion only if it is manifestly unreasonable or based upon untenable grounds.

[4] Administrative Law and Procedure - Judicial Review - Arbitrary and Capricious Test - In General. An administrative decision will not be set aside under the arbitrary and capricious standard unless the reviewing court finds willful and unreasoning action in disregard of the facts and circumstances.

[5] Environment - Shoreline Management - Development Permit - Cumulative Effect. A permit for a development may be denied, even though the development would have little impact on the environment by itself, if the cumulative impact of the development in question and other potential developments would be significant.

92 Wn.2d 656, 601 P.2d 494 The Department of Natural Resources, et al, Respondents, v. Thurston County, et al, Appellants. NO.: 45816 FILE DATE: October 4, 1979.

[1] Plats - Environment - SEPA - Plat Approval - Power of Local Government. When considering a preliminary plat of a subdivision, a local governmental decision-making body is required by the State Environmental Policy Act of 1971 to consider environmental effects and is empowered by SEPA to deny the plat on environmental grounds.

[2] Plats - Environment - Shoreline Management - Approval of Permit - Effect Upon Plat Proposal. A finding of the Shorelines Hearings Board that a proposed preliminary plat is adequate for granting a shorelines substantial development permit is relevant only to the jurisdiction of the board under the shorelines management act and does not preclude a local governmental decision-making body from denying the plat upon environmental considerations.

[3] Statutes - Constitutional Challenge - Vagueness - Application. Only regulatory statutes prohibiting certain types of conduct and imposing sanctions for violations of their standards may be challenged for vagueness.

[4] Environment - SEPA - Delegation of Powers - Validity. The substantive authority delegated by SEPA to local governmental bodies to apply environmental standards when making land use decisions is a valid delegation of legislative power.

[5] Eminent Domain - Constitutional Taking - Public Property. An unconstitutional taking of property for public use without just compensation can occur only when the property taken is private rather than public.

[6] Eminent Domain - Constitutional Taking - Determination. When determining whether governmental action constitutes a taking of private property, a court will balance the public interest in regulating the use of the property against the private interests infringed upon. In determining the degree of infringement of the private property interests, the court will consider the type of encumbrance imposed and whether the owner thereafter can adapt the property to a reasonably profitable use.

92 Wn.2d 1, 593 P.2d 151. Portage Bay-Roanoke Park Community Council, et al, Respondents, v. The Shorelines Hearings Board, et al, Respondents, David B. Hurlbut, Appellant. NO.: 45571 FILE DATE: April 5, 1979.

[1] Environment - Shoreline Management - Public Benefit Doctrine - In General. Any common-law public benefit doctrine of the State concerning shorelines is superseded by the shoreline management act (RCW 90.58). The act does not require a compensating public benefit to offset private benefits in every development permit issued, but rather requires that the public interest be considered in the planning and allowance of developments along shorelines.

[2] Environment - Shoreline Management - Aesthetic Considerations - Standards. The denial of a permit for a shoreline development on aesthetic grounds must be based on specific aesthetic standards in the shorelines management act or in a refined master program.

[3] Appeal and Error - Findings of Fact - Failure To Assign Error - Effect. Findings of fact to which no error is assigned become the established facts of the case.

[4] Administrative Law and Procedure - Judicial Review - In General. An administrative decision is not clearly erroneous unless the reviewing court is left with a firm and definite conviction that a mistake has been made after reviewing the entire record, and such a decision is not arbitrary and capricious unless it is the result of willful and unreasoning action in disregard of the facts and circumstances.

[5] Environment - Shorelines Hearings Board - Appeal - Cost of Transcript. In an appeal of a decision of the Shorelines Hearings Board to the superior court, the cost of preparing the transcript of the proceedings before the Board is initially borne by the party taking the appeal and is part of his costs of the action.

91 Wn.2d 721, 592 P.2d 1108. Weyerhaeuser Company, Respondent, v. King County, Appellant. NO.: 44770 FILE DATE: March 29, 1979.

[1] Statutes - Application - Determination. Whether a particular activity falls within statutory terms whose meaning is clear is a question of fact.

[2] Environment - Shoreline Management Act - Development - "Dumping" and "Filling." The terms "dumping" and "filling", as used in RCW 90.58.030(3)(d) to define a development, are unambiguous and present a question of fact and not of law, as to whether a specific activity falls within the statutory terms. In making such a determination the courts will give deference to the expertise and special knowledge of the Shorelines Hearings Board.

[3] Logs and Logging - Forest Practices Act - Statutory Provisions - Validity. Laws of 1975, 1st Ex. Sess., ch. 200, 11, which expressly changes portions of the Forest Practices Act of 1974 (RCW 76.09), also amends several sections of the Shoreline Management Act without setting forth such sections in full as required by Const. art. 2, 37, and is void.

[4] Statutes - Amendment - Constitutional Requirements - Applicability. For purposes of Const. art. 2, 37, which requires amendatory acts to set out in full the statute or section being amended, an enactment is amendatory if it changes the scope and effect of a prior act. In order to be exempted from the requirement, the act must be a complete act, independent of prior acts and standing alone as the law on the particular subject which it treats.

[5] Environment - Shoreline Management Act - Local and State Agencies - Function. The doctrine of preemption does not apply where two statutes create agencies with different functions and purposes, and it cannot be said that the legislature intended that the Department of Natural Resources preempt regulation of shoreline logging practices to the exclusion of local governments acting under the Shoreline Management Act.

[6] Environment - Water Quality - County Action - Authority. A county acting under the Shoreline Management Act has authority to impose water quality control conditions on forest practices which are regulated by a substantial development permit.

[7] Environment - Shoreline Management Act - Permits - Scope. Only those developments within the shorelines are subject to regulation by permits under the Shoreline Management Act.

[8] Environment - Shoreline Management Act - Application - Interpretation by Board. In construing the Shoreline Management Act, the courts will give considerable weight to the interpretation of the Shorelines Hearings Board and will sustain such interpretation when it is consistent with the language and goals of the act.

90 Wn.2d 473, HARVEY v. SAN JUAN COUNTY COMMISSIONERS. FILE DATE: September 21, 1978.

[1] Environment - Shoreline Management - Master Program - Challenge - Procedure. The approval of a shorelines master program by the Department of Ecology and the publication of the program by the department as part of its administrative regulations is a significant and mandatory step in the adoption of the program. Accordingly, the department is a necessary party in any action challenging a master program and, pursuant to RCW 34.04.070, such an action must be brought in Thurston County.

[2] Parties - Necessary Party - Definition. Under CR 19(a), a necessary party is one who has sufficient interest in the litigation that the judgment cannot be determined without affecting that interest or leaving it unresolved.

NATURE OF ACTION: Owners of real property sought judicial review of a county's adoption of a shorelines master program.

Superior Court: The Superior Court for San Juan County, Nos. 3290, 3291, Howard A. Patrick, J., dismissed the action on February 14, 1977, for nonjoinder of a necessary party and improper venue.

Supreme Court: Holding that the Department of Ecology is a necessary party to an action challenging a shorelines master program and that exclusive venue for such an action lies in Thurston County, the court AFFIRMS the dismissal.

89 Wn.2d 203, 571 P.2d 196, Department of Ecology, et al, Respondents, v. Pacesetter Construction Company, Inc., et al, Appellants. NO.: 44226 FILE DATE: November 3, 1977.

[1] Constitutional Law - Police Power - Validity - Taking Determination. The determination of whether or not a governmental action affecting private property is a proper exercise of the police power or, instead, is a taking of private property for which compensation is constitutionally required must be determined on the facts of each case. Such a determination requires that the public interest in regulating a property use be balanced against the unencumbered use of property by its owner.

[2] Environment - Shoreline Management - Police Power - Aesthetic Considerations. In determining whether a particular application of the Shoreline Management Act of 1971 is a valid exercise of the State's police power, aesthetic considerations which have a corresponding economic value may be balanced against the use restrictions imposed by the act.

[3] Environment - Shoreline Management - Development Restrictions - Height Baseline. The baseline for the building height restriction in the Shoreline Management Act of 1971 is the average grade level of the land in its natural state.

[4] Environment - Shoreline Management - Building Codes - Purpose of Act. The Shoreline Management Act of 1971 is not intended to regulate construction but to protect the environment. It is not to be construed in pari materia with building codes.

[5] Appeal and Error - Assignments of Error - Aggrieved Party. A party to an action may only assign error to those portions of the judgment with respect to which it may be said to be aggrieved.

[6] Action - Class Action - Minimum Requirements - Shoreline Management Act. The provisions of RCW 90.58.230, regarding actions on behalf of others under the Shoreline Management Act of 1971, do not supersede the minimum class action requirements of CR 23.

89 Wn.2d 78, 569 P.2d 712. James R. Sisley, et al, Appellants, v. San Juan County, et al, Respondents. NO.: 44592 FILE DATE: September 22, 1977.

[1] Environment - SEPA - Impact Statement - Major Action - What Constitutes. Governmental issuance of a substantial development permit under the shoreline management act for a private project constitutes an "action" within the meaning of RCW 43.21C.030(2)(c), which requires an impact statement for major governmental actions significantly affecting the environment.

[2] Environment - SEPA - Impact Statement - Necessity - Determination. In determining whether a major governmental action "significantly" affects the quality of the environment, so as to require an impact

statement under RCW 43.21C.030(2)(c), a governmental agency must consider all the environmental factors involved and the cumulative effect of the action in the light of the environmental policy of SEPA.

[3] Environment - SEPA - Impact Statement - Necessity - Negative Determination - Review. A governmental agency's determination that a major action does not require an impact statement because of insufficient environmental significance, is reviewed by a trial or appellate court on the basis of the clearly erroneous test.

[4] Environment - SEPA - Judicial Review - Clearly Erroneous Test. In applying the clearly erroneous test, the entire agency record is open to judicial review and the court is required to consider the public policy and the environmental values of SEPA. The agency's determination will be set aside if the court firmly concludes that, despite the supporting evidence, a mistake has been committed. Such a determination will be overturned when not supported by a prima facie showing of compliance with the procedural requirements of SEPA.

[5] Environment - SEPA - Impact Statement - Significant Effect - What Constitutes. A major governmental action "significantly" affects the environment so as to require an impact statement under RCW 43.21C.030(2)(c) when there is a reasonable probability that it will have more than a moderate effect on the quality of the environment.

[6] Environment - SEPA - Impact Statement - Necessity - Effect. The requiring of an environmental impact statement does not necessarily mean that the action involved will be prohibited by SEPA, but rather insures that there will be a full disclosure and consideration of the environmental factors before a decision is made to take the action.

89 Wn.2d 16, 568 P.2d 783. English Bay Enterprises, Ltd., Appellant, v. Island County, et al, Respondents. FILE DATE: September 1, 1977.

[1] Environment - Shoreline Management Act - Jurisdiction - Determination. The method employed in a particular activity is more important than its purpose in determining whether it is subject to the Shoreline Management Act of 1971. A finding of the Shorelines Hearings Board as to applicability of the act will be given great weight by the courts.

[2] Environment - Shoreline Management Act - Jurisdiction - Dredging - What Constitutes. An operation which involves scooping up the top 12 inches of the ocean bed so as to leave a visible trench constitutes "dredging" within the meaning of the Shoreline Management Act of 1971, which provides that dredging is a development and that a substantial development on a shoreline requires a permit under the act.

[3] Administrative Law and Procedure - Judicial Review - In General. The courts will give due deference to the specialized knowledge and expertise of an administrative agency in reviewing its decisions. A decision is not "arbitrary and capricious" unless it is willful and unreasoning action in disregard of facts and circumstances; a finding of "clearly erroneous" requires the reviewing court to conclude that a mistake has been committed after reviewing the entire evidence.

[4] Environment - Fish - Shellfish - Jurisdiction. The fact that the Department of Fisheries is given authority over the harvesting of shellfish by RCW Title 75 does not preclude another state agency, such as the Department of Ecology, from having concurrent jurisdiction over such activity.

87 Wn.2d 280, EDWARD W. HAYES, Respondent, v. GEORGE YOUNT, ET AL, Appellants. No. 43776. July 15, 1976.

[1] Administrative Law and Procedure - Judicial Review - In General. Administrative action is clearly erroneous when the court is firmly convinced, upon considering the specific public policy involved, that the agency result is a mistake; such action is arbitrary or capricious when it represents willful and unreasoning action done in disregard of facts and circumstances. The court may not substitute its judgment for that of the agency.

[2] Administrative Law and Procedure - Judicial Review - Application. An appellate court's review of an administrative agency action is an independent examination of the action and record.

[3] Environment - Shoreline Management - Development Permit - Cumulative Effect. The Shorelines Hearings Board's consideration of the cumulative environmental impact of future developments by others in a determination regarding a substantial development permit is proper under the Shoreline Management Act of 1971 (RCW 90.58) and is not arbitrary or capricious.

[4] Statutes - Construction - Administrative Construction - Regulations. The interpretation of an administrative regulation by the agency charged with carrying out its effect will be accorded due deference during judicial review of an agency decision.

[5] Statutes - Construction - Superfluous Provisions - Regulations. An administrative regulation should be judicially construed to insure that no portion of it is insignificant, void, or superfluous.

[6] Environment - Shoreline Management - Land Fills - Fill Materials - Harmful Result. Administrative regulations, promulgated under statutory authority, which generally proscribe the use of solid waste as fill materials in shoreline areas or which generally prohibit sanitary landfills in such areas, are not arbitrary or capricious. No proof that such fills would create harmful leachates is necessary to prohibit them.

[7] Environment - Shoreline Management - Development Permit - Other Parcels. The Shorelines Hearings Board's consideration of other, similar but not identical, neighboring parcels in a determination regarding a substantial development permit is not clearly erroneous.

[8] Environment - Shoreline Management - Development Permit - Hearing - Scope. The Shorelines Hearings Board, in a hearing concerning a substantial development permit, must consider the permit application as filed and may not consider proposed changes in its terms made during the hearing.

[9] Administrative Law and Procedure - Judicial Review - Substantial Evidence - Effect. An administrative proceeding wherein the findings, conclusions, and decision are supported by substantial evidence in the record will not be found to be willful and unreasoning upon judicial review.

[10] Environment - Shoreline Management - Development Permit - "Marine Industrial Area." A substantial development permit authorizing a "marine industrial area" describes a use too vague for meaningful review by the Shorelines Hearings Board and is properly vacated for lack of specificity.

[11] Constitutional Law - Administrative Law and Procedure - Due Process - Unconstitutional Taking - Basis. An administrative action which results in no present permanent restriction upon use of property presents no issue as to an unconstitutional taking.

85 Wn.2d 441, THE HAMA HAMA COMPANY, Respondent, v. SHORELINES HEARINGS Board, Defendant, THE DEPARTMENT OF ECOLOGY et al, Appellants. No. 43357. June 5, 1975.

[1] Parties - Appeal and Error - Notice of Appeal - Coparties - Adequacy. A notice of appeal which is filed "on behalf" of a particular category of litigants, e.g., intervenors, is sufficient to include all parties so designated in the caption of the notice.

[2] Statutes - Construction - Legislative intent - in General. When construing ambiguous and conflicting statutory language, the courts examine the entire enactment in an attempt to give effect to the legislature's intent.

[3] Statutes - Construction - Rules of Construction - Application. "Rules" of statutory construction are merely tools used by the courts in determining the intent of the legislature. A rule or principle of construction is not applied when it would lead to inconsistent results.

[4] Environment - Shoreline Management Act - Appeals - in General. RCW 90.58.180(2), which permits both the Department of Ecology and the Attorney General to appeal and grants them 45 days to do so, governs the appeal of the issuance of a substantial development permit whether the permit was issued before or after adoption of a local master plan. The conflicting directives of RCW 90.58.140(2) (a) do not apply in such situation.

[5] Statutes - Construction - General and Specific Provisions. When a conflict exists between a statute dealing with a subject in an incidental manner and one dealing with the subject in a specific way, the more specific statutory provision is controlling.

[6] Statutes - Construction - Administrative Construction. The construction placed upon ambiguous statutory language by an administrative agency charged with its administration is generally afforded great weight by the courts.

[7] Statutes - Construction - Legislative Intent - Sequential Drafts - Effect. Examination of the various sequential drafts of legislation prior to its enactment as a means of construing legislative intent may be

useful only when legislative awareness of prior drafts existed, and even then should not be considered of conclusive value.

[8] Civil Procedure - Time of Filing - Statutory Provisions - Purpose. The purpose of RCW 1.12.070, which generally specifies that matters required to be filed with governmental bodies by certain dates are considered filed at the time of mailing, is to avoid penalties for mail-delayed matters.

[9] Environment - Shoreline Management Act - Appeals - Time of Filing. For purposes of RCW 90.58.180(2), which requires that an appeal from the issuance of a substantial development permit be taken within 45 days of the filing of the permit, such a permit is "filed" upon receipt by the proper authorities.

84 Wn.2d 551, THE DEPARTMENT OF ECOLOGY et al., Respondents, v. BALLARD ELKS LODGE No. 827, Appellant. No. 43105. November 7, 1974.

[1] Administrative Law and Procedure - Judicial Review - Clearly Erroneous Test - Application. In their review of administrative actions, superior courts and appellate courts both apply the "clearly erroneous" standard set forth in RCW 34.04.130(6)(e); upon appeal from a superior court's review of administrative action, an appellate court applies the "clearly erroneous" test directly against the administrative action in question.

[2] Administrative Law and Procedure - Judicial Review - Clearly Erroneous Test - In General. In order to find an administrative determination to be within the "clearly erroneous" test of RCW 34.04.130(6)(e), a reviewing court must be firmly convinced that a mistake has been made, even though there is evidence to support that determination.

[3] Administrative Law and Procedure - Judicial Review - Limitation. A court must give proper consideration to the specialized knowledge and expertise of an agency whose decision it is reviewing and may not merely substitute its judgment in place of that of the agency.

[4] Environment- Shoreline Management - Purpose - Public Interest The purpose of the Shoreline Management Act of 1971 (RCW 90.58) is not to totally prohibit future development along state shorelines and waters, but rather to ensure that such development be carefully carried out in keeping with the public interest.

84 Wn.2d 416, NARROWSVIEW PRESERVATION ASSOCIATION et al., Appellants, v. THE CITY OF TACOMA et al., Respondents. No. 43187. September 26, 1974.

[1] Zoning - Proceeding - Appearance of Fairness - In General. Public bodies conducting hearings affecting planning and zoning not only must insure that such hearings are fair and impartial, and that they, insofar as is practicable, are open-minded, objective, impartial, free of entangling influences, and

capable of hearing both the weak and the strong voices, but must also give the appearance of impartiality.

[[2] Zoning - Proceeding - Appearance of Fairness - Application. The appearance of fairness doctrine is applicable to a member of a public body who had an interest which might have influenced his action regardless of whether the interest actually affected his action. Such an opportunity for partiality, whether exercised or not, creates the appearance of unfairness in the eyes of those affected by the action and violates the doctrine.

[3] Zoning - Proceeding - Appearance of Fairness - Minimal Contacts. The mere acquaintanceship of a member of a planning board with one of the parties affected by an action, or having minimal, casual business contacts with such a party, does not give rise to a violation of the appearance of fairness doctrine in the absence of contrary findings of fact.

[4] Zoning - Spot Zoning - Judicial Review - Standards. Spot zoning is a specialized type of arbitrary and capricious activity by a municipal government. In the absence of a demonstration to the reviewing court of arbitrary and capricious action by the public body there cannot be a valid finding that spot zoning has occurred.

[5] Zoning - Environment - SEPA - Impact Statement - Rezoning. A determination by a zoning board that a change in classification of an area does not significantly alter the environment of the area under consideration and that no impact statement is necessary, when such determination is supported by substantial evidence in the record, indicates compliance with the State Environmental Policy Act of 1971 (RCW 43.21C) and will not be disturbed on review. A significant alteration of the area would be the causing of adverse environmental effects under the new use in excess of those created by uses previously authorized, and a major change in the affected area's environment resulting from a cumulation of the adverse effects from the new use and those already present.

[6] Zoning - Environment - Shoreline Management Act - Development Permit - Rezoning. Rezoning of an area lying on or near a shoreline is an administrative action which does not involve either a physical alteration of the land or an irrevocable commitment to permit such an alteration, and is not a development within the terms of the shoreline management act (RCW 90.58), which requires the obtaining of a development permit for any substantial development of land within the purview of the act.

[7] Judgment - Entry - When Effective. A judgment known to all parties to have been signed and placed in the clerk's file and lodged in his office on a particular date is deemed entered for procedural purposes (CR 58) on that date regardless of the date of its file stamp and corresponding docket entry.

84 Wn.2d 25, THE DEPARTMENT OF ECOLOGY et al., Respondents, v. THE CITY OF KIRKLAND et al., Respondents, ROBERT J. DORAN, Judge of the Superior Court for Thurston County, Petitioner. Filed July 3, 1974.

[1] *Administrative Law and Procedure - Judicial Review - Final Decision - Determination.* An administrative decision is "final," as required by RCW 34.04.130(1) before judicial review is available, when it is determinative of the action or proceeding and fixes a legal relationship between the parties. The label affixed to the action by the administrative agency is not determinative of its finality.

[2] *Administrative Law and Procedure - Judicial Review - Final Decision - Tie Vote.* An action of an administrative board is not prevented from being final, for purposes of RCW 34.04.130(1), by the fact that there is a tie vote or that there is insufficient concurrence to constitute a decision if such inconclusive action results in a termination of the proceeding and leaves unchanged a previously fixed legal relationship between the parties. A request for a reconsideration is not necessary to finality.

[3] *Environment - Shorelines Hearings Board - Review - Inconclusive Action.* The provision of RCW 90.58.170 which requires a concurrence of four of the six members of the Shorelines Hearings Board to reach a decision, was not intended to prevent judicial review in the event of there being less than four members in agreement. Such a decision, in effect, affirms the action before the board, and the reviewing court should consider the findings of fact and conclusions of those members who voted for affirmance.

82 Wn.2d 475, EASTLAKE COMMUNITY COUNCIL et al., Appellants, v. ROANOKE ASSOCIATES, INC., et al., Respondents. No. 42470. July 19, 1973.

[1] *Zoning - Preservation of Existing Rights - Building Permit Application - Effect.* The filing of an application for a building permit vests the applicant with the right to use the land, if the permit is thereafter granted, in accordance with zoning regulations in effect at the time of the application, provided that the application submitted and the permit issued conform to zoning and building regulations in force at the time of application.

[2] *Zoning - Building Regulations - Administration - Limitations.* The implementation of a building code by administrative authorities permits no discretion as to compliance with code provisions or variance of its terms and requirements.

[3] *Zoning - Building Regulations - Invalid Permit - Effect.* An invalid building permit confers no rights and cannot be subsequently "cured" regardless of whether the invalidity is caused by error of the applicant or the issuing agency or both.

[4] *Equity - Application - Public Interest.* Equitable relief is generally limited to disputes between two private parties with a contractual or propertied relationship. Substantial financial expenditure will not justify equitable interference to the detriment of the public interest, particularly where the expenditures were made with disregard of pending litigation.

[5] *Administrative Law and Procedure - Arbitrary and Capricious -What Constitutes.* A finding of arbitrary and capricious administrative action requires a lack of consideration or disregard of facts and circumstances in reaching a decision.

[6] Appeal and Error - Findings of Fact - Review - In General. A trial court's findings supported by substantial evidence will not be disturbed on appeal.

[7] Environment - SEPA - Impact Statement - Application to Prior Activities. Requiring an environmental impact statement for a construction project constitutes a prospective application of the State Environmental Policy Act of 1971 when the one project involves several stages of governmental action and, although several actions approving the project occurred prior to the effective date of the act, one major governmental action took place after the effective date.

[8] Environment - SEPA - Action - What Constitutes. A governmental agency's activities constitute an "action" within the meaning of SEPA when it authorizes private parties to engage in projects affecting the environment, as well as when an agency initiates and develops the project itself.

[9] Statutes - Construction - Legislative Intent - In General. The legislative intent and purpose of a particular term within a statute are determined from the subject matter and text as a whole, interpreted in terms of the general objective and purpose of the legislation.

[10] Environment - SEPA - Major Action - What Constitutes. A governmental agency's discretionary and nonduplicative act authorizing the initiation or continuance of a construction project by private parties is a "major action" within the meaning of SEPA when the character of the project is such that its implementation by the agency itself would have constituted a major governmental action. Any limitation on the exercise of discretion under existing legislation is immaterial in the light of SEPA's injection of environmental factors into normal governmental decisions, and an action is nonduplicative of prior "major action" whenever new information is available or environmental factors have not previously been considered.

[11] Environment - SEPA - Substantially Completed Projects - Application of Act. Substantial completion or development of a project does not preclude SEPA's application upon the occurrence of major governmental action unless there is no viable possibility of modification or abandonment through the governmental action in question. Extent of completion should be determined as of the time of reasonable anticipation of the necessity of governmental action rather than the time of the action itself. In determining the necessity of an impact statement for ongoing projects commenced prior to the act, there must be a balancing of the likelihood of environmental harm by a completed project against the economic cost of suspension or abandonment.

[12] Environment - SEPA - Operation and Effect. The environmental policy act operates to require governmental agencies to evaluate environmental factors and to exercise discretion with reference thereto; it is for the agency to determine what action is appropriate in the light of all relevant factors.

[13] Environment - Administrative Law and Procedure - Rights of Permittee - Subsequent Legislation. The issuance of permits by regulatory agencies is subject not only to the particular authorizing legislation but also to subsequent legislation concerning the duties of the agency, such as the State Environmental Policy Act of 1971. A permittee of such an agency is subject to the effects of legislation enacted subsequent to issuance of the permit.

[14] Navigable Waters - Waters Over Privately Owned Land - Laws Applicable. Common-law rules protecting the public right to proceed upon navigable waters which lie over privately owned land do not apply to navigable water where both harbor lines and planned zoning exist.

82 Wn.2d 280, THE DEPARTMENT OF HIGHWAYS, Petitioner, v. KING COUNTY CHAPTER, WASHINGTON ENVIRONMENTAL COUNCIL, et al., Respondents. No. 42688. May 17, 1973.

[1] Environment - Administrative Law and Procedure - State Agency - Shorelines Hearings Board. For purposes of RCW 34.04, the administrative procedure act, the Shorelines Hearings Board created by RCW 90.58 is an "agency" subject to the act.

[2] Courts - Appellate Jurisdiction - In General. The jurisdiction of the Supreme Court and the Court of Appeals is generally over appeals in actions of a purely judicial nature resulting from the determinations of a court of original jurisdiction. Jurisdiction to review actions of administrative bodies, in the first instance, is in the superior court.

[3] Environment - Shorelines Hearings Board - Review - Appellate Court. Under RCW 90.58.180(8), the original jurisdiction to review a decision of the Shorelines Hearings Board lies in the superior court.

[4] Courts - Appeal and Error - Review - Merits of Cause. While an appellate court may have the discretionary power of review under extraordinary circumstances and may respond on the merits of a cause which is before it on a procedural question, an issue which has not been properly prepared and presented must be returned to a lower court for the completion of its record according to ordinary judicial procedures.

Wn.2d 306, CHARLES S. WILBOUR et at., Respondents and Cross-appellants, v. NORMAN G. GALLAGHER et at., Appellants. No. 39444. December 4, 1969. *This decision spurred the Legislature to enact the SMA. See Footnote 13.*

[1] Navigable Waters - Rights of Public - Private Land Periodically Submerged. By analogy with changing rights of riparian owners and the public in the case of navigable lakes whose waters are periodically raised or lowered - Owners of uplands, not riparian, which are regularly and periodically submerged by an artificial raising of the water level of a navigable lake, cannot fill or otherwise use their land so as to interfere with the public's expanded right of navigation and rights corollary thereto during the periods that the water level is raised. This is particularly true where the title of such non-riparian upland owners is deraigned through deeds which make the property subject to be "perpetually inundated and overflowed".

[2] Adjoining Landowners - View of Water - Periodic Separation by Intervening Property. In the absence of zoning or other restrictions, a landowner did not have a year-round right of an

unobstructed view of a navigable lake, where another's land, which was submerged at times and positioned between the objecting landowner and the water, was exposed periodically and during those times was subject to the other's unrestricted and exclusive use, including the possible erection of temporary structures.

We are here concerned with the uses to which privately owned land can be put, which for "thirty-five years" has been submerged each year by waters of a navigable lake. The submergence at its maximum depth (3 to 15 feet) was for approximately 3 months, June 15 to September 15 each year. The circumstances and history which furnished the background for the presentation of this unusual problem must be explained in some detail." . . .

It follows that the defendants' fills, insofar as they obstruct the submergence of the land by navigable waters at or below the 1,100 foot level, must be removed.«13» The court cannot authorize or approve an obstruction to navigation. . . .

Footnote 13: We come to this conclusion with some reluctance since there have been other fills in the neighborhood about which there has apparently been no protest. It is apparent, however, that if the defendants were to prevail in this litigation the whole area around Lake Chelan between the 1,079 and 1,100 feet levels could be dotted with structures on fills, or stilt-like structures raised above the 1,100 foot level, and buildings resting on columns are now not unusual.

We are concerned at the absence of any representation in this action by the Town or County of Chelan, or of the State of Washington, all of whom would seem to have some interest and concern in what, if any, and where, if at all, fills and structures are to be permitted (and under what conditions) between the upper and lower levels of Lake Chelan. There undoubtedly are places on the shore of the lake where developments, such as those of the defendants, would be desirable and appropriate. This presents a problem for the interested public authorities and perhaps could be solved by the establishment of harbor lines in certain areas within which fills could be made, together with carefully planned zoning by appropriate authorities to preserve for the people of this state the lake's navigational and recreational possibilities. Otherwise there exists a new type of privately owned shorelands of little value except as a place to pitch a tent when the lands are not submerged.