

Jorgen Bader
6536 -- 29th Ave. N.E.
Seattle, WA 98115

April 7, 2010

Seattle City Council
The City of Seattle
Seattle City Council, Floor 2
600 -- 4th Avenue
Seattle, WA 98104

Received

APR 15 2010

SR520 Document Control

RE: Nelson/Nygaard Report
on SR 520

Honorable Members:

I-297-001 This letter comments on the Nelson/Nygaard Project Enhancement, Draft Report, dated March 2010, as supplemented by its presentation to the City Council on April 5, 2010 (the "Report"). The Report culminates in "System Package 5 - Balance B" (Pages 50-54 of the text, and Slide 58 of the Presentation. It highlights eight changes to the Alternative A+ design recommended by the Legislative Workgroup for the new SR 520.

Of the eight, three adhere to Alternative A/A+ and the changes relate to implementation:

- 1) Building a bridge parallel to the historic Montlake Bridge with three lanes in each direction;
- 2) An at-grade crossing of Montlake Boulevard East and North East Pacific Street by University Hospital and Husky Stadium; and
- 3) Traffic management on SR 520 (and on the adjoining streets).

I-297-002 Three proposals require caution and more study if adoption is considered:

- 4) Widening the pedestrian/bicycle pathway on the south bound to westbound ramp to the Portage Bay Bridge by the NOAA Fisheries Center. NOAA is already very concerned about the extent of the taking from its property for SR 520 and would probably not agree to accommodate more taking from it.
- 5) Changing the curved off-ramp from SR 520 west bound to north bound Montlake Boulevard East and the curved right hand on-ramp south bound on Montlake Boulevard to the Portage Bay Bridge into a 90° stop intersection. This would reduce the through put at the intersection. It might slow down the traffic movement at the intersection and perhaps cause back-ups on SR 520 ramps; and to limit that effect, the Washington State Department of Transportation ("WSDOT") through its control of the traffic signals may set

I-297-003

I-297-001

The design refinements in the Preferred Alternative respond to comments made on the SDEIS and to WSDOT's work with many project stakeholders under Engrossed Substitute Senate Bill (ESSB) 6392, which was passed by the Washington State Legislature in 2010.

The Preferred Alternative includes a second bascule bridge parallel to the Montlake Bridge, similar to Option A.

The University of Washington is responsible for the Rainier Vista Project, which would lower NE Pacific Place and the Burke Gilman Trail. The Rainier Vista Project is not part of the SR 520, I-5 to Medina Project, however WSDOT is coordinating with the UW on issues of transit and pedestrian connectivity at the Montlake Triangle.

The SR 520, I-5 to Medina project would improve traffic operations on SR 520 and its interchanges. As part of the Arboretum Mitigation Plan, WSDOT has also committed to fund traffic calming measures along Lake Washington Boulevard and to work with the Seattle Department of Transportation on further measures to manage traffic in the Arboretum. The Preferred Alternative would include removing the Lake Washington Boulevard Ramps, and replacing the function of the current Lake Washington Boulevard off-ramp at a revised Montlake interchange located on the new Montlake lid. The Preferred Alternative design for the Portage Bay Bridge includes a managed shoulder rather than an auxiliary lane. See Chapter 2 of the Final EIS for a description of the Preferred Alternative.

I-297-002

The amount of NOAA NWFSC property required for implementation of the project has been considerably reduced with the Preferred Alternative, which includes an alignment shift to the south at the east end of the new Portage Bay Bridge. A complete description of the Preferred Alternative

I-297-003 | the phases to the detriment of north-south local traffic.
6) Making Montlake Boulevard a continuous median from the Montlake Cut to SR 520 would require residents and visitors to make right-in and right-out turns. Report, p. 43. This would have significant adverse impacts on travel to the Seattle Yacht Club and the NOAA Fisheries Center from the east and south.

I-297-004 | Two proposals are ill-advised:
7) Keeping the Arboretum ramps that connect SR 520 and Lake Washington Boulevard; and
8) Slimming the Portage Bay Bridge by eliminating the auxiliary lane.
This letter focuses on the last two.

Lake Washington Boulevard Ramps

I-297-005 | Six North East Seattle Community Associations sent in a comment letter on the Supplemental Draft Environmental Impact Statement in support of Alternative A+ with the Arboretum ramps removed (copy attached). The letter points out that the Arboretum is a priceless heritage and internationally recognized; that removing the SR 520 ramps from the Arboretum entirely allows the entire area to revert to Arboretum use as the Olmsted Plan had envisioned; and that it would redirect SR 520 traffic out of the Arboretum to other City arterials.

The Arboretum ramps would open Lake Washington Boulevard to west bound traffic and thereby expand its usage. It would violate state law. The Nelson/Nygaard Report nowhere mentions state law or state policy, nor call out the Union Bay wetlands and their utility for salmon fingerlings or bull trout, which are endangered species.

The Arboretum ramps take up more than an acre of wetland. Those wetlands are "shorelands of statewide significance" under the Shoreline Management Act, RCW Chapter 90.58. RCW 90.58.020 (extract attached) states in part as follows:

"The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department ... and local government ... shall give preference to uses in the following order of preference which:

†This would have a major impact on the NOAA Fishes Center and the Seattle Yacht Club. The right-in and right-out would require motorists coming from the east and from the south to make a circular turn at the UW triangle garage north of the Lake Washington Ship Canal. The only approach by roadway would be from the north. Convenience of access is important to business and agencies, and affects the choice of location of events and meetings. At an earlier hearing, the representative of a Seattle Yacht Club testified that it makes a substantial part of its income to sustain the Club from catering to events, such as wedding receptions, dances, reunions, and parties. It might be disconcerting to visitors or service personnel to the residents, who would have to make a long trip around if there were no parking spaces ahead. An aid car would have a "U" Turn roundabout trip to University Hospital from westside residences.

is in Chapter 2 of the Final EIS. See the Land Use, Economics, and Relocations Discipline Report Addendum in Attachment 7 to the Final EIS for a description of property acquisitions and easements required for project implementation.

I-297-003

Since publication of the SDEIS, WSDOT has developed a Preferred Alternative, which is similar to Option A but with a number of design refinements that would improve mobility and safety while reducing negative effects. Chapter 2 of the Final EIS describes the Preferred Alternative. The Final Transportation Discipline Report in Attachment 7 to the Final EIS provides new analysis of congestion and access restrictions around the Montlake Boulevard and Portage Bay under the Preferred Alternative.

Page 6-2 in Chapter 6 of the Final EIS Transportation Discipline Report describes current conditions at the westbound off- and on-ramps at Montlake Boulevard. Currently drivers traveling northbound on Montlake Boulevard NE trying to access SR 520 westbound must make a U-turn at the Montlake Boulevard/East Hamlin Street intersection. Similarly, drivers who use the SR 520 westbound off-ramp to access areas south of the interchange need to aggressively merge across two northbound through lanes to access the U-turn to travel southbound on Montlake Boulevard. Both of these conditions constrain northbound through traffic on Montlake Boulevard, create an unsafe environment, worsen congestion, and create backups onto the freeway.

With the Preferred Alternative, the Montlake Boulevard/westbound SR 520 ramp intersection would be signalized and a northbound left turn from Montlake Boulevard onto westbound SR 520 would be allowed. With this configuration, the Montlake Boulevard/westbound SR 520 ramp intersection is expected to operate acceptably at LOS C in the year 2030. Access from westbound SR 520 to areas south of the interchange

I-297-005

(1) Recognize and protect the statewide interest over local interest;
(2) Preserve the natural character of the shoreline;
(3) Result in long term over short term benefit;
(4) Protect the resources and ecology of the shoreline..."
Transportation, particularly local traffic, is further down the line. RCW 90.58.020 mandates preservation of the shoreline to the "greatest extent feasible" and requires that permitted uses .. be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area..."

The Growth Management Act supplements the Shoreline Management Act in RCW 36.70A.172 (extract attached) by requiring counties and cities to "give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries."

The new SR 520 bridge takes up Union Bay wetlands on the north side. The only replacement available is the lagoon in the Arboretum occupied by the Arboretum ramps. None of the replacements suggested by the SDEIS are available or comparable. Under Initiative 42, the City has the duty to replace park land taken by eminent domain from it with comparable property equivalent in utility, size, and purpose in the neighborhood. The City can only comply by yanking out the Arboretum ramps entirely and securing a reversion of the entire area from East Montlake Park/McCurdy Park easterly into a consolidated park. The park would be enhanced by retaining the lid over SR 520 by East Montlake/McCurdy Park. (The proponents of A/A+ are agreeable to extending that lid further west; WSDOT said that it would not be practical.)

The Nelson/Nygaard Report and its presentation suggests that a Traffic Management Plan ("TMP") in the Arboretum could accomplish the same ends as removing the ramps. The opinion errs:

- The TMP does not protect the wetlands or provide park land;
- The TMP would leave pedestrians crossing between Azalea Way in the Arboretum and the Japanese Tea Garden dodging traffic as currently. It would not be as helpful as a pedestrian overpass.
- The TMP would involve administrative expense and monitoring which removal of the Arboretum ramps entirely avoids. To control volumes, would the TMP use rationing, such as stickers for preferred neighborhoods, users, or tolls; and if so, where does city government get any statutory authority to make such distinctions among its citizenry or impose tolls?
- A TMP may supplement removal of the Arboretum ramps. If lower traffic volumes from removal of the ramps result in higher speeds, traffic calming would be available.

The removal of the Arboretum ramps would cause motorists to

area would be provided via 24th Avenue East. These changes would eliminate the existing northbound bottleneck at the Montlake Boulevard/East Hamlin Street intersection, reduce northbound congestion, and improve safety in the area. As shown in Exhibit 6-3 in Chapter 6 of the Final Transportation Discipline Report, with the Preferred Alternative, intersections in this area would operate at acceptable conditions and/or better than the No Build Alternative.

The Preferred Alternative would result in no adverse effect to access to the Seattle Yacht Club or NOAA Fisheries Center.

I-297-004

Comment noted. The Preferred Alternative would include removing the Lake Washington Boulevard Ramps, and replace the function of the existing Lake Washington Boulevard off-ramp at a revised Montlake interchange located on the new Montlake lid. The Preferred Alternative design for the Portage Bay Bridge has reduced the width by including a managed shoulder rather than an auxiliary lane.

I-297-005

Since the SDEIS was published, FHWA and WSDOT have identified a Preferred Alternative that is most similar to Option A, but includes a number of design refinements that minimize the effects presented in the SDEIS. These refinements respond to comments made on the SDEIS and to WSDOT's work with many project stakeholders under Engrossed Substitute Senate Bill (ESSB) 6392, which was passed by the Washington State Legislature in 2010. See Chapter 2 of the Final EIS for a description of the planning process and the Preferred Alternative. One of WSDOT's key efforts under ESSB 6392 was to work with the Arboretum and Botanical Garden Committee (ABCG), of which the Arboretum Foundation is a member, to identify appropriate mitigation for the impacts of the I-5 to Medina project on the Arboretum. This work involved review of the Arboretum Master Plan and commitments by

use the Montlake Boulevard ramps, which are very close. Motorists approaching from the east to go east bound across the Lake Washington Floating Bridge would travel an extra 1/3rd of a mile and those going west bound on SR 520 and after exiting going eastbound would go an extra 1/5th of a mile. It would add to the traffic at the Montlake Boulevard intersection with SR 520. The impact needs to be put in perspective:

- The Nelson/Nygaard Report offers suggestions to protect the Shelby/Hamlin area of Montlake that cause much, much greater congestion there, e.g. substituting a 90° "urban intersection" for the curves that now provide easy right turns for merging traffic; removing the auxiliary lane westbound ramp the Poetage Bay Bridge; and extending the median to close all cross-street roadways between the Montlake Cut and SR 520.

- The Nelson/Nygaard Presentation, p. 26, states that the "Intersection of 23rd and Madison [is] likely to be more congested." The SDEIS p. 5-14 and 5-15, showing intersections impacted by Alternative A does not show any south of Montlake Boulevard and Lake Washington Boulevard on 23rd Avenue East nor does the text identify any. The Nelson/Nygaard Report, Issue # 3, states:

"The SDEIS did not evaluate the impact on the intersection of 23rd Avenue and Madison, but there is speculation [that] this intersection would also operate at a lower level of service and would likely require improvement to address the congestion." (emphasis supplied)

"Speculation" means guesswork.

A WSDOT travel model for 2030 using a weighted average travel time for 24 key routes (both on and off SR 520) in the Montlake Interchange Area, presented to the Legislative Workgroup on November 24, 2009, showed a travel time of 10 minutes for Option A without the Lake Washington Boulevard and 7½ minutes with them --- a difference of 2½ minutes. A WSDOT study of transit times at its October 8, 2009 meeting found no significant difference in the area between McGraw St. and the Montlake Triangle during the 2030 P.M. peak travel period.

A WSDOT Handout from 2008 showed the difference in travel time for local traffic northbound from Lake Washington Boulevard to N.E. Pacific St. at its intersection with N.E. Pacific Place by University Hospital was two minutes more with the Lake Washington Boulevard ramps removed at 2030 peak hour and from 24th Avenue East and East Boyer Avenue to be 7 minutes more. (The southbound data is outdated by addition of auxiliary lane.) During mediation, WSDOT estimated that the time differential during off peak hours would be substantially less.

The Nelson/Nygaard Report anticipates that congestion on 23rd Avenue would "encourage cut through traffic from Lake Washington Boulevard on Boyer and Interlaken." Traffic already uses this route coming from or to the west attracted by the Arboretum on and off ramps. Usage is particularly heavy during events at Husky Stadium and in the Bank of America Arena (Hec Edmundson Pavilion). Closing the Arboretum ramps ends the west flow and offsets the anticipated added traffic from ~~Madison Park~~ and Madison Valley.

WSDOT to provide funding toward a number of projects in the plan. This 8-month coordination effort resulted in the Arboretum Mitigation Plan, which is included in Attachment 9 of the Final EIS.

I-297-006

Auxiliary Lane

The six North East Seattle communities favor retention of the auxiliary lane on the Portage Bay Bridge westbound. It provides a much smoother entry and exit for motorists with very real safety advantages. It relieves congestion on Montlake Boulevard that would otherwise occur and assists local transit travel. Removing that lane would encourage traffic that should use the Portage Bay Bridge to travel to I-5 on N.E. Pacific St. or N.E. 45th St. instead. The additional paving for the auxiliary lane is in the midst of the SR 520 bridge and does not affect homes, park lands, or moorages.

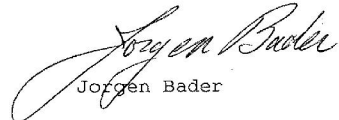
I-297-007

Conclusion

Alternative A/A+ is a balanced design developed over a two year period during mediation by WSDOT in consultation with multiple representatives of diverse interests considering, among other factors: environmental values and impacts; assisting public transit; impacts on parks (especially the Arboretum and the wetlands), the UW campus, and the neighborhoods; minimizing energy consumption and greenhouse gases; the needs of freight mobility and motorists; local traffic; construction and maintenance costs; and applicable laws and permitting. It is superior to the Nelson/Nygaard model called Balanced B.

Any City recommendation should be accompanied by a Corridor Management Agreement as explained in earlier letters from proponents of Alternative A/A+.

Yours truly



Jorgen Bader

cc NOAA
WSDOT
ABGC

I-297-006

Since publication of the SDEIS, WSDOT has identified a Preferred Alternative with 6 lanes and a managed shoulder across Portage Bay. Section 5.1 of the Final EIS describes the freeway operation and travel time benefits that would result from this modification.

I-297-007

Comment noted.

North East Seattle Community Organizations

MARCH 2010

Paula Hammond
Secretary of Transportation
Attention: Jenifer Young
Environmental Manager
SR 520, I-5 to Medina: Bridge Replacement and HOV Project
SR 520 Project Office
600 Stewart Street, Suite 520
Seattle, WA 98101

RE: Supplemental Draft Environmental Impact Statement
SR 520, I-5 to Medina Bridge Replacement and HOV Project

Dear Secretary Hammond and Environmental Manager Young:

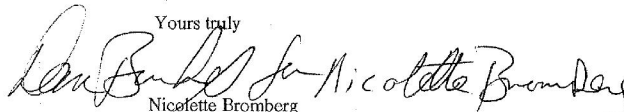
I-297-008 | After considering the alternatives presented, we favor Alternative A+ without any ramps connecting SR 520 and Lake Washington Boulevard East.

I-297-009 | Alternative A+ can move the project forward. It is the only design within the statutory budget of \$ 4.65 Billion Dollars; it does the least damage to the Arboretum and Seattle parks, the Union Bay wetlands, the University Campus and the surrounding neighborhoods; it is friendly to transit; and it mitigates its impact to the Montlake and Roanoke Park neighborhoods by adding lids at strategic locations.

I-297-010 | The Arboretum is a priceless heritage and internationally recognized. Removing SR 520 ramps from the Arboretum entirely allows the entire area to revert to Arboretum use as the Olmsted plan had envisioned. The return of all the area now occupied by ramps would provide WSDOT with replacement in kind for wetlands taken for the mainline bridge on the north of the Arboretum and would redirect SR 520 traffic out of the Arboretum to other City arterials. This would assist getting the needed permits for the project.

I-297-011 | WSDOT recommended the auxiliary lane on Portage Bay as smoothing the entry and exit of vehicles on to the Portage Bay bridge and assisting the flow of traffic on Montlake Boulevard East. The traffic analysis bears out this recommendation.

Yours truly


Nicolette Bromberg
Belvedere Terrace Community Council

I-297-008

The Preferred Alternative would not include construction of any new ramps in the Arboretum, and would remove both the existing Lake Washington Boulevard ramps and the R.H. Thomson Expressway ramps. Access to Lake Washington Boulevard by westbound SR 520 traffic would be moved to a new intersection located on the Montlake Boulevard lid at 24th Avenue East.

I-297-009

Comment noted.

I-297-010

The Preferred Alternative would not include construction of any new ramps in the Arboretum, and would remove both the existing Lake Washington Boulevard ramps and the R.H. Thomson Expressway ramps. Access to Lake Washington Boulevard by westbound SR 520 traffic would be moved to a new intersection located on the Montlake Boulevard lid at 24th Avenue East.

One of WSDOT's key efforts under ESSB 6392 was to work with the Arboretum and Botanical Garden Committee (ABCG), of which the Arboretum Foundation is a member, to identify appropriate mitigation for the impacts of the I-5 to Medina project on the Arboretum. This work involved review of the Arboretum Master Plan and commitments by WSDOT to provide funding toward a number of projects in the plan. This 8-month coordination effort resulted in the Arboretum Mitigation Plan, which is included in Attachment 9 of the Final EIS.

I-297-011

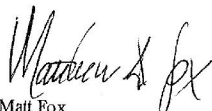
Please see the response to comment I-297-006.



Ryan Rockwell
President, Hawthorne Hills Community
Council



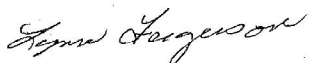
Jody Chatalas
President, Ravenna-Bryant Community
Council



Matt Fox
President, University District Community
Council



Kent Wills
President, University Park
Community Club



Lynn Ferguson
President, Windermere North
Community Association

JUDICIAL DECISIONS

ANALYSIS

Hearing board Purpose —Rezoning

Hearing board.

The Shorelines Hearing Board is subject to RCW 34.04, the Administrative Procedure Act. Department of Hwys. v. King County Chapter, Wash. Envtl. Council, 82 Wn.2d 280, 510 P.2d 216 (1973).

Purpose.

The purpose of the Shoreline Management Act of 1971 is not to totally prohibit future development along state shorelines and waters, but rather to en-

sure that such development be carefully carried out in keeping with the public interest. State Dep't of Ecology v. Ballard Elks Lodge No. 827, 84 Wn.2d 551, 527 P.2d 1121 (1974).

—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 this act. Narrowsview Preservation Ass'n v. City of Tacoma, 84 Wn.2d 416, 526 P.2d 897 (1974), overruled on other grounds, Norway Hill Preservation & Protection Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Rulemaking authority.

Limited authority of Department of Ecology to adopt wetlands rules. 89 Atty Gen. Op. No. 21.

RESEARCH REFERENCES

Univ. of Puget Sound Law Review.

Regulatory taking doctrine in Washington: now you see it, now you don't. 12 U. Puget Sound L. Rev. 339.

Washington Shoreline Management Act to Protect the Shorelines of Puget Sound From High-Speed-Vessel Wake Wash, * see 75 Wash. L. Rev. 519 (2000).

Washington Law Review.

For note and comment, "Wake-up Call: Using the

90.58.020. Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance; shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. [1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

Finding — Severability — Part headings and table of contents not law — 1995 c 347; See notes following RCW 36.70A.470.

JUDICIAL DECISIONS

ANALYSIS

- Compatibility analysis
- Department of fisheries
- Dredging
- Jurisdiction
- Local permits
- Non-conforming uses
- Other element
- Public access requirements
- Public benefit doctrine
- Public trust doctrine
- Sovereign immunity
- Statewide significance
- Taking of property
- Use
- Voluntary setback

Compatibility analysis.

Because the shorelines hearings board, when doing its compatibility analysis, focused to a large degree on the project's compatibility with the bay as a whole rather than on its impact on the area immediately adjacent to the proposed site, the findings did not

support the SHE's determination that Seattle Yacht Club (SYC's) proposed outstation complied with Shoreline Management Act (SMA), county's master program, and did not result in severe degradation of the pre-existing lifestyle in the area. *Jefferson County v. Seattle Yacht Club*, 73 Wn. App. 576; 870 P.2d 987, review denied, 124 Wn.2d 1029, 883 P.2d 326 (1994).

Department of fisheries.

Department of fisheries does not have control over harvesting of shellfish to exclusion of shorelines hearings board. *English Bay Enters., Ltd. v. Island County*, 89 Wn.2d 16, 568 P.2d 783 (1977).

Dredging.

Washington's Shoreline Management Act regulates and controls dredging and water quality within Washington's shoreline area. *Friends of Earth v. United States Navy*, 841 F.2d 927 (9th Cir.), modified on other grounds, 850 F.2d 599 (9th Cir. 1988).

The dredging and water quality regulations of the Shoreline Management Act and the Navy's permit apply to the Navy's construction of the Everett homeport, regardless of whether that activity occurs

on federal United States on other g

Jurisdiction

Department under the government after it h shoreline t is not entit by bringin the proper 147 Wn.2c

Local per

Board p permit for where suc Tacoma S Dep't of F (1998).

The Sho local gover for shoreli as defined Skagit Co Commer permit req not a "sub of the Sh Shacks of 743 P.2d 2

A condi activity ev the Shorel Inc. v. Skz (1986), aff Board p

fill where sufficient P.2d 1038

Non-conf

Nonconf uses. A fi tially base the area ir Club, 73 W 124 Wn.2c

The sho the nonco could only tion of the proposed j County v. P.2d 987, r (1994).

Other ele

Residen this act. R it was prol time the l ance and : Buschel v. P.2d 910 (

Public ac

The Sho calculation

- (b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;
- (c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and
- (d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050, [1990 1st ex.s. c 17 § 17.]

Editor's Notes.

The amendment by 1995 c 402 § 4, which added "and shall make such designations so that they are consistent with the comprehensive flood control ma-

JUDICIAL DECISIONS

ANALYSIS

Construction
Agricultural lands

Construction.
Actions involving resource lands under RCW 36.70A.060 and this section are not considered to be moratoriums or interim zoning controls for the purposes of RCW 36.70A.390. *Manson v. Clark County Bd. of Commrs.*, 79 Wn. App. 641, 904 P.2d 317 (1995).

Agricultural lands.

Amendments to a county's comprehensive plan and zoning code which allowed active recreational uses on properties located within a designated agricultural area violated the Growth Management Act, and the land in question did not qualify for innovative zoning techniques under RCW 36.70A.177. *King County v. Central Puget Sound Growth Mgt. Hearings Bd.*, 142 Wn.2d 543, 14 P.3d 138 (2000).

36.70A.172. Critical areas — Designation and protection — Best available science to be used.

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, a growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas. [1995 c 347 § 105.]

Finding — Severability — Part headings and table of contents not law — 1995 c 347. See notes following RCW 36.70A.470.

JUDICIAL DECISIONS

Review of policies.

If a city or county chooses to adopt critical areas policies, the board has jurisdiction, pursuant to RCW 36.70A.290, to review such policies, but only for purpose of determining whether the policies are in compliance with the requirement of this section to include the best available science in the process of developing a policy. *Honesty in Envtl. Analysis & Legislation v. Central Puget Sound Growth Mgt. Hearings Bd.*, 9 Wn. App. 522, 979 P.2d 864 (1995).

Wetlands regulated under development shall be delineated in accordance with RCW 90.58.380. [1995 c 382 § 1.]

36.70A.177. Agricultural lands —

(1) A county or a city may use the designated as agricultural lands (36.70A.170). The innovative zoning rural lands and encourages the agricultural nonagricultural uses to be limited to agricultural purposes.

(2) Innovative zoning techniques limited to:

- (a) Agricultural zoning, which prohibits nonfarm uses of agricultural land;
- (b) Cluster zoning, which allows the remainder in agricultural or open space zoning;
- (c) Large lot zoning, which establishes a minimum lot size, which is necessary to achieve a successful farm operation;
- (d) Quarter/quarter zoning, which allows a minimum lot for each one-sixteenth of an acre;
- (e) Sliding scale zoning, which allows purposes with a minimum lot size of one acre to increase. [1997 c 429 § 23.]

Severability — 1997 c 429. See note following RCW 36.70A.3201.

JUDICI

ANALYSIS

Construction
Applicability

Construction.

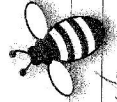
In order to constitute an innovative zoning technique consistent with the overall meaning of Growth Management Act, development regulations must satisfy the mandate under RCW 36.70A.020, 36.70A.060, and 36.70A.170 to conserve agricultural

36.70A.180. Report on planning pro;

(1) It is the intent of the legislature to assist them in meeting the requirements of a comprehensive plan under RCW 36.70A before July 1, 1990, including but not limited to conserving agricultural, forest, and mineral resources, considering the modification or adoption of regulations implementing the comprehensive plan, and the legislature that funds be made available to assist them in meeting the requirements

Received
APR 15 2010
STREETS AND HIGHWAYS DIVISION

A Note From
Mr. J. Bader



Here are my comments

to the City Council on the
Action Request Report. As
clear from the City Council
hearing that few of the
speakers realize what



removing the auxiliary
lane and a 90° turn at

Montlake for the on and off
ramps would add to the
congestion. What
needs to be added is



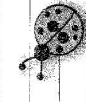
A Note From
Mr. J. Bader



the back-ups resulting
so that the public is
informed, especially
freight mobility people,
and users of the
ramps.



Joey Bader
4/8/2010



I-297-012

Please see the response to comment I-297-006.