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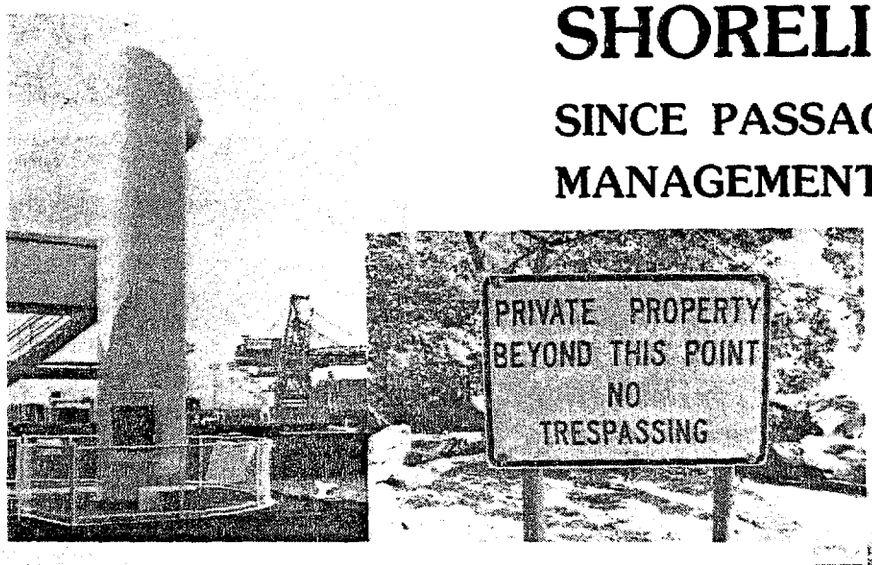
AN EVALUATION OF PUBLIC ACCESS TO WASHINGTON'S SHORELINES

SINCE PASSAGE OF THE SHORELINE MANAGEMENT ACT OF 1971



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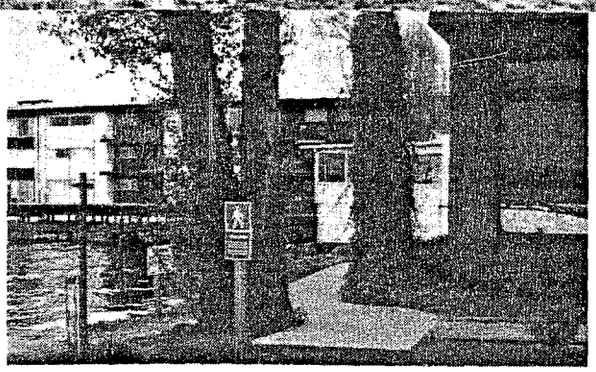

Washington State Dept of Ecology

WASHINGTON STATE
DEPARTMENT OF ECOLOGY
SHORELANDS DIVISION
OLYMPIA, WASHINGTON
SEPTEMBER, 1983

DONALD W. MOOS
Director

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PREFACE

Is public access to shorelines in the state of Washington adequate? Of the state's 2,400 miles of marine shorelines, only about 17 percent are accessible to the public. When the ocean beaches are excluded, the figure drops to 10 percent. Many "Private Property - No Trespassing" signs block what may be a legal right of public use. Of the few places where the public can visit the water's edge, most are public parks established years ago.

Some improvement has occurred since passage of the Shoreline Management Act of 1971. The Shoreline Act establishes public access to shorelines as a priority policy. Accomplishments under the act are noteworthy in some localities, but insignificant in other instances. In many cases, the accesses made by shoreline permit provisions over the last 10 years are unknown to the public. Most increases in accessible public beaches have been by public acquisition -- not from shoreline permit provisions. Yet, the Shoreline Act will need to assume a greater future role as public acquisition opportunities become more limited.

Accesses created by shoreline permit provisions have sometimes been less than successful. Time and again, the author observed heavy to capacity use of public shoreline parks, while dedicated public access went unused. The reasons for this are varied, but are largely due to the fact that accesses are done on a piecemeal basis and that most shoreline planners and their corresponding jurisdictions do not have the knowledge and expertise to create usable, functional, and lasting public accesses by permit provision. Even the enlightened jurisdictions have run into difficulties, because the modern knowledge and experience with public access is not complete. We are still on an upward sloping learning curve.

The mission of the following report is, then, to discover what is being done with public access, evaluate how well it is working, and make recommendations to improve the provision of public access in the future. The recommendations will do much to improve the situation. Foremost among them is the need for the Department of Ecology to conduct a workshop for planners, local officials, and developers on providing public access. In this way, the knowledge gained from this evaluation can be put to immediate and effective use.

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Figure 1. *An accessible waterfront becomes a focal point for a community fair. Generally, these kinds of opportunities are only afforded by publicly acquired and developed parks.*

INTRODUCTION

The Shoreline Management Act of 1971 marked a significant turning point in the state's history of resource management. It established that the state's shorelines were important public interest features, were "valuable and fragile," and were limited resources needing sound planning that would foster "reasonable and appropriate" uses. The act requires that development of the shorelines be regulated by a planning system which would encourage appropriate uses and limit uses that are not in the public interest. That system consists of master programs prepared by local governments and approved by the state and a substantial development permit program administered by local governments. The act provides that shoreline management guidelines and local master programs give preference to providing access to publicly owned shorelines and to increasing recreational opportunities for the public in the shoreline.

Creation of shoreline management in Washington state was not easy. Several years of growing concern by citizens and government officials about increasing pressure for development of shorelines resulted in a legislative attempt in 1970 to enact a shoreline management act. That failed. In the fall of 1970, the Washington Environmental Council gathered enough signatures on an initiative petition to certify it to the legislature in 1971. The legislature, rather than accepting the council's version, enacted an alternate which became law June 1, 1971. Both the initiative and the legislative act were presented to the voters in November 1971. The public vote affirmed shoreline management and retained the legislature's alternative, the Shoreline Management Act of 1971. This 1971 act, with some minor amendments, still governs the shoreline management program today.

A significant feature of the act is its policy statements about public access:

> *The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:*
>
> *(1) Recognize and protect the state-wide 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, 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.

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. (from RCW 90.50.020, emphasis added)

The Shoreline Management Act is executed through a local substantial development permit program which is guided by an approved master program (a use plan and use regulations). The master program is prepared by a local government for its jurisdiction. The programs are approved by the Washington Department of Ecology (WDOE--the state agency that oversees the program) after ensuring each is consistent with the intentions of the act. Thereafter, each jurisdiction administers a permit program in conformance with its master program. Each permit is subject to a 30-day appeal period. Appeals are processed before the state Shorelines Hearings Board. Construction cannot start until the appeal period ends. Projects that require a conditional use permit or variance from the master program must be individually approved by WDOE. Most local jurisdictions have a public hearing process for variances and conditional uses to go through before the permit is sent to WDOE.

Most local master programs have statements of policy, regulations, and other requirements pertaining to public access. The existence of shoreline access policy statements in the master program provide no certainty that permits will be conditioned for access. More certainty exists when access requirements are established as "shall" regulations. However, it is not always possible or practical to provide access even though the jurisdiction's policies state that it shall be done. In these cases, substitute actions such as payments "in lieu of" have been attempted with limited success.

Also of note is the observation by the author that written policies and regulations do not make access happen -- exceptional local planners, supported by citizens and politicians, do. The most successful public access programs are those where a local planning official is dedicated to the goal and works to get it accomplished.

The job is also made easier and more palatable for developers to accept if two elements exist at the local level. First, the program should be guided by an areawide plan for access. Such a plan logically shows how each individual access dedication ties into the whole. Second, a preapplication conference with the developer should take place to explain the necessary requirements to comply with the master program.

Examples exist throughout the state that illustrate how an enlightened jurisdiction can accomplish significant public access benefits. Some of these are cited in this report under the heading, "Case Examples." On a broader scale, anyone interested in public access should not overlook the San Francisco Bay Conservation and Development Commission (BCDC). Starting in 1965, the BCDC has practically written the book on public access. Although a comprehensive evaluation of the BCDC was not possible within the scope of this report, its accomplishments were examined and the San Francisco Bay plan studied.

Need for This Study

WDOE officials, although required to review shoreline permits, have never made a comprehensive attempt to determine how well the public access policies specified in the act are being accomplished. After more than ten years of shoreline management, it seemed appropriate to evaluate public access and other program areas.

In addition, proposals have been made from time to time in the legislature to modify the Shoreline Management Act. While these have not resulted in more than minor amendments, the legislative activity did point out the need to evaluate program performance and determine how well the act's goals are being met. Moreover, the Office of Ocean and Coastal Resource Management, charged with evaluating the federal coastal zone management program, became interested in a more thorough evaluation of Washington's program than their annual reviews allowed.

Consequently, WDOE proposed an evaluation of the Shoreline Management and Coastal Zone Management programs. The evaluation was organized to concentrate on four issue areas: public access, wetlands protection, public perception and expectations, and master program analysis.

Three of the issue evaluations were contracted to consultants. The public access evaluation, the subject of this report, was conducted internally by WDOE because of available expertise and staff.

Study Method

The access evaluation was conducted in three parts. First, ownership and access to the state's shorelines were inventoried. Second, interviews were conducted with local government shoreline planners, staffs of state agencies, public port officials, and with several developers who have

experience with shoreline management. Information was obtained from about 45 individuals. Third, a limited literature review was done primarily to learn ideas from sources outside Washington's programs.

At the outset, the following questions were addressed:

- How much has public access been increased?
- Which methods have been most/least effective in enhancing public access?
- Which methods of enhancing public access hold most promise for future implementation?
- Are there legislative guidelines or process changes that are needed relative to providing public access?

To evaluate these questions the following techniques for increasing public access were examined:

1. Public acquisition of access areas (both fee simple and less than fee simple);
2. Dedication of public access areas through the permit process;
3. Placement of signs designating access points;
4. Provision of parking and connecting access ways; and
5. Marking of state owned tidelands.

Definitions

The Shoreline Act establishes as a matter of policy that public access to publicly owned shorelines shall be increased. At first glance that sounds simple enough until one begins to consider all the possible variations of public access and also searches out other Shoreline Act statements that pertain to public use of the shoreline. The following section defining access was prepared to narrow the scope and provide a measurable objective for public access.

Access -- access encompasses the public's right to get to and use the state's public waters (both salt and fresh), the water/land interface and associated shoreline areas.

Access is considered adequate when the public has an unrestricted legal right to use the public waters and shorelines in public ownership and there are adequate physical improvements connecting the shoreline with upland public thoroughfare areas (e.g., parks and roadways). Adequate physical connection shall mean having a usable point of access within a one-mile walking distance without having, at any time, to trespass on private uplands or tidelands.

Access is considered inadequate when the public use of the publicly owned shoreline and waters is restricted because of lack of public knowledge about ownership, lack of physical access facilities, commitments to other land use purposes, intimidating upland and neighboring owners, or because of legal restrictions which cloud the freedom of public use.

Access can be either physical or visual. Physical access encompasses the notion of approaching the land/water interface, to be at the place where the water wets the land. Physical access has two forms: lateral and perpendicular.

> Lateral - lateral access consists of acquiring use rights to extensive areas of shoreline parallel to the water's edge.
>
> Perpendicular - perpendicular access consists of an easement or corridor from a public thoroughfare or facility (e.g., a public roadway) to a shoreline area. Also included would be lands necessary for auxiliary facilities such as parking and restrooms. A common situation which would require the acquisition of perpendicular access is where private property separates an extensive area of publicly owned tidelands (e.g., the ocean beaches) from a public roadway.

Visual access incorporates the concept of providing views of the shoreline and the water from vantage points which may or may not be in the shoreline zone. Any facility which provides visual access to a beach or waterfront area is considered a form of beach access but does not obviate the need for physical access. Such facilities include, but are not limited to, scenic overlooks, scenic roadways, viewing towers, and such waterfront structures as piers and docks. Visual access may or may not be coincident with the provision of physical access.

In the urban setting, the definition of type of shoreline access is necessarily more flexible than the definition applied to other types. Since most urban waterfront areas have been radically altered from their original condition by development, the usual concepts of natural beaches simply do not apply. Such facilities as piers, docks, walkways, and other types of structures allowing visual and/or physical access to the water are considered forms of access for the purposes of this evaluation project.

Access varies by the degree of limitation that is placed on the general public. In simplified form, this variation can be categorized in three ways:

1. General Public Access/Unlimited - access that is available for use freely by the general public with no restrictions.

2. General Public Access/Limited - access that is limited by time of day, season, or other such temporal factor and access that may be limited by quota or by entry fee.

3. Community Access - access that is limited to the residents of a particular subdivision, condominium, club, or other such entity where the general public is restricted.

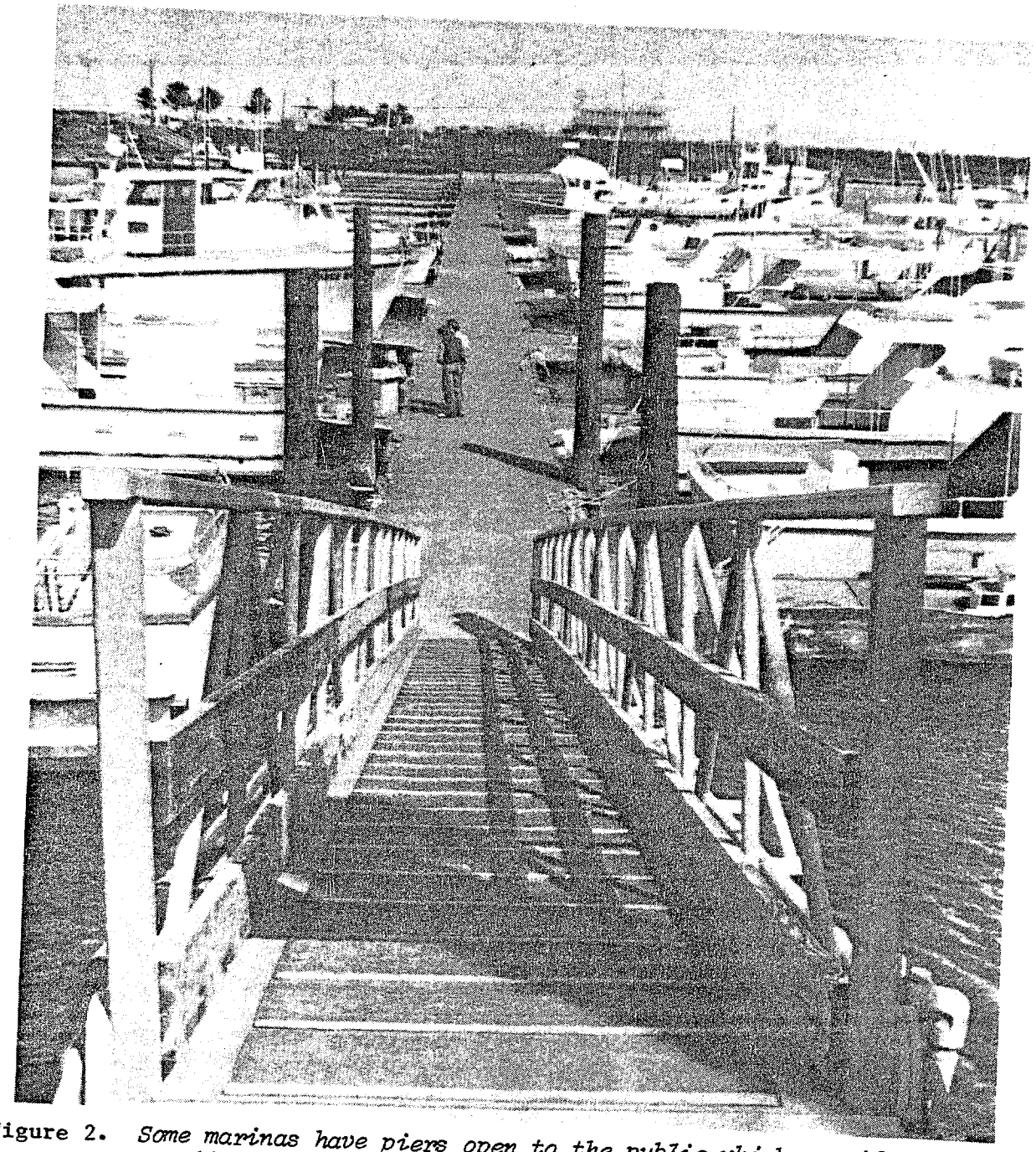

Figure 2. *Some marinas have piers open to the public which provide excellent opportunities for public access. The trend, however, is to fence these and allow access only to moorage renters.*

Shorelines of the State - for the purposes of this evaluation, the standard objective is to provide public access to "shorelines of the state" as defined by the Shoreline Management Act. This definition* is as follows:

RCW 90.58.030(2)(c). "Shorelines of the state" are the total of all "shorelines" and "shorelines of state-wide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them; except (i) shorelines of statewide significance;

(ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and

(iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

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

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

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

(A) Nisqually Delta -- from DeWolf Bight to Tatsolo Point,

(B) Birch Bay -- from Point Whitehorn to Birch Point,

(C) Hood Canal -- from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area -- from Brown Point to Yokeko Point, and

(E) Padilla Bay -- from March Point to William Point;

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

(iv) Those lakes, whether natural, artificial or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

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

(vi) Those wetlands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

Please note that the term "shorelines" covers the water area but that this report is concerned with access to the land/water interface zone.

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* This definition is made in recognition of the state's right of ownership of the beds and shores of navigable bodies of water up to and including the line of ordinary high water mark, as exercised under Article XVII of the Washington State Constitution. No attempt is made here to further elaborate or define the constitutional definition except to say there is no relationship between "navigability" and the definition arbitrarily established by the Shoreline Management Act. This means the public right to use navigable waters may be greater or less than "shorelines of the state" defined by the act.

INVENTORY OF SHORELINES

Accessible shorelines in the state of Washington, are made up of two components. They are (1) publicly owned shorelines with publicly owned uplands or rights of way providing upland access, and (2) privately owned uplands with either public or private tidelands wherein the public is given the legal right of access by virtue of an easement or permit provision.

An attempt was made to inventory accessible shorelines in these two categories. For the first, an inventory was comparatively simple -- there are data on publicly owned shoreline property. It was just a matter of determining how much shoreline met the criteria for adequate access. The second category was a different story. It was not possible to comprehensively inventory private shorelines to which the public has a legal right of access.

There is no complete record of publicly accessible, but private, shorelines because no title to real property has been transferred to a public agency. Limited records do exist where easements are recorded with county auditors, but the practice of requiring easements is not universal. Many jurisdictions rely on permit provisions alone, without recorded easements. Permit provisions which are not recorded with the property title are very difficult to discover and become more so as time goes by.

It would be possible, with enough personnel and time, to search through shoreline permits to find those having access provisions. Since more than 10,000 permits have been issued, the task was not reasonable to attempt in this study. The alternative of polling the county and city jurisdictions about their own permits was tried on a limited scale only to find that, in most instances, local inventories have not been kept.

Publicly Owned Shorelines

When Washington became a state in 1889, most of its shorelines were claimed by the state. This was based on a concept of English common law, in which the shores and beds of navigable waters were the property of the state. Shortly after statehood, the legislature authorized sale of the state-owned tide and shore lands to upland owners. In the ensuing years, approximately 60 percent of the state-owned beaches were sold. This practice was terminated by the legislature in the early 1970's (RCW 79.01.470).

In the 1960's, the issue of providing areas for public recreation came to the public forefront. In 1962, the president appointed an Outdoor Recreation Resources Review Commission (ORRRC) which looked at recreation and public policies pertaining to public use of the nation's resources. Two of the commission's recommendations were that a Bureau of Outdoor Recreation be created and that a federal grant-in-aid program be implemented for acquisition and development of outdoor recreation sites. These recommendations were implemented and not too long thereafter (1964), the State of Washington established the Interagency Committee for Outdoor Recreation (IAC). The IAC was created to administer a grant program for recreation acquisition and development. Fund sources for the program include the Federal Land and Water Conservation Fund, and state sources including state bonds, tax sources and special license fees such as for off-road vehicles, all of

Figure 3. *A public beach. The author concluded that the public benefit gained by shoreline permit provision is greatly overshadowed by publicly owned waterfront parks as is shown here, but that shoreline permitted access will become increasingly important in the future.*

which are matched by a local share. These actions resulted in the public purchase of some of the previously sold shoreline areas. This program has probably had a more significant impact on the amount of accessible public beaches than any other single program in the last 20 years.

The IAC grants program coupled with what has been accomplished under the shoreline management program accounts for essentially all the increase in accessible public beaches during the past 11 years. Some "increase" has also been accomplished through the Department of Natural Resources (DNR) tidelands marking program.

Data obtained from WDOE and the IAC were used to compile Figure 4 showing miles of shoreline in the state of Washington. The table shows that there are about 18,000 miles of freshwater shoreline and 2,400 miles of saltwater shorelines in the state. Of these, 12 percent of the freshwater, or 2,300 miles, and 45 percent of the saltwater, or 1,100 miles, are in public ownership.* Of the shorelines in public ownership 1,900 miles (10%) of freshwater and 400 miles (17%) of salt water are considered to be "accessible."

Accessibility was determined by making the following judgments:

1. All shoreline that was coincident with upland public ownership was considered accessible;

2. DNR tidelands were not considered accessible unless there was evidence of upland access usually represented by DNR upland ownership;

3. Upland public ownership was assumed when the IAC computer printout listed a named park, access, or similar upland site;

4. All the ocean beaches were considered accessible because of a Washington State Attorney General's opinion concerning public use of the Pacific Ocean beaches (AGO#27,1970). The opinion is discussed in the section titled "Public Rights to Private Shorelines."

The numbers seem to show that the state of Washington has a fair amount of public shorelines. But if usability is considered, the amount of accessible shoreline diminishes dramatically.

Take for example, DNR public beaches on the Strait of Juan de Fuca in Clallam County. The inventory shows about 100 miles. Most of these, however, are tidelines not having public uplands and the beach itself is often rocky, narrow, and undesirable for public recreation. In fact, the DNR's beach access book contains the following warning about most of the inventoried beaches: "DANGER: Boat landing extremely dangerous." Of 21 entries on the Strait of Juan de Fuca, only seven beaches have upland access providing about 23 miles of shoreline that is usable by the general public. The remainder has no upland access and, as described above, is dangerous for boat access.

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* Does not include <u>all</u> U.S. Forest Service, National Park Service and Washington Department of Natural Resources lands (only "developed" and/or "designated" sites were included).

FIGURE 4

SHORELINE INVENTORY
(Distances in Miles)

COUNTY	ALL SHORELINES						MARINE SHORELINES		
	TOTAL SHORELINE		PUBLICLY OWNED SHORELINE		ACCESSIBLE SHORELINE		Publicly Owned Tidelands With Coincident Publicly Owned Uplands	OCEAN	
	Freshwater	Saltwater	Freshwater	Saltwater	Freshwater	Saltwater		Indian Reservation	Seashore Conservation Area
Adams	172.3	--	16.4	--	16.4	--	--		
Asotin	255.3	--	53.2	--	53.2	--	--		
Benton	189.9	--	83.2	--	72.4	--	--		
Chelan	321.9	--	65.1	--	65.1	--	--		
Clallam	593.3	180.1	19.9	150.2	5.5	70.8	32.5	12.0	38.3
Clark	527.8	--	66.2	--	46.2	--	--		
Columbia	152.1	--	4.1	--	4.1	--	--		
Cowlitz	1229.6	--	25.6	--	25.6	--	--		
Douglas	209.3	--	19.7	--	6.5	--	--		
Ferry	209.9	--	6.7	--	2.0	--	--		
Franklin	190.6	--	24.9	--	24.9	--	--		
Garfield	66.2	--	1.8	--	1.8	--	--		
Grant	733.0	--	121.2	--	121.2	--	--		
Grays Harbor	1183.3	146.0	33.7	91.3	27.7	28.0	3.8	20.8	28.0
Island	14.0	240.0	4.3	106.5	4.3	27.0	27.0		--
Jefferson	164.6	206.7	29.6	110.4	29.6	51.4	27.7	4.8	27.7
King	1168.8	90.8	248.8	14.1	144.8	14.1	14.1		--
Kitsap	62.7	228.6	1.4	55.0	1.4	9.0	9.0		--
Kittitas	528.9	--	44.9	--	30.9	--	--		--
Klickitat	375.8	--	44.3	--	25.3	--	--		--
Lewis	1221.3	--	38.3	--	38.3	--	--		--
Lincoln	253.8	--	96.0	--	96.0	--	--		--
Mason	476.5	199.5	15.1	58.1	15.1	6.7	6.1		--
Okanogan	1015.1	--	187.1	--	163.8	--	--		--
Pacific	446.8	155.2	10.3	56.7	10.3	56.7	33.4		25.7
Pend Oreille	297.4	--	14.2	--	5.0	--	--		--
Pierce	574.3	216.6	111.9	8.4	60.9	8.4	8.4		--
San Juan	12.8	372.7	8.7	341.2	8.7	88.7	88.7		--
Skagit	724.2	127.0	95.4	17.7	95.4	17.7	17.7		--
Skamania	521.9	--	18.6	--	10.3	--	--		--
Snohomish	1256.9	62.4	132.9	57.2	139.9	7.5	7.5		--
Spokane	455.3	--	34.4	--	34.4	--	--		--
Stevens	369.3	--	328.2	--	328.2	--	--		--
Thurston	257.0	90.0	7.6	12.5	7.6	3.5	3.5		--
Wahkiakum	275.1	--	12.0	--	12.0	--	--		--
Walla Walla	390.0	--	5.8	--	5.8	--	--		--
Whatcom	487.2	105.9	196.8	7.8	121.8	7.8	7.8		--
Whitman	454.8	--	8.0	--	8.0	--	--		--
Yakima	293.0	--	38.6	--	35.0	--	--		--
TOTALS	18211.9	2421.5	2274.9	1087.1	1905.4	397.3	286.7	37.6	119.7

Source: Washington Department of Ecology, and
Washington Interagency Committee for Outdoor Recreation

1971-1982 Change in Inventory

An attempt was made to determine what portion of the above-described inventory was accumulated during the tenure of the shoreline act.

The logical approach to this quest appeared to be to gather inventory data from the early 1970's and compare it with inventories of today. Logical, but not practical. It was not possible to obtain accurate and complete data which could be validly compared. There was also the problem of obtaining any data on private shorelines which are available for public use. The best data available is that of the IAC. An early (1971) IAC inventory was compared with the most current inventory (1982). Some wide discrepancies exist in the data as shown in Figure 5 which could not be resolved since detail from the 1971 inventory is no longer available.

Some of these discrepancies occur because the definitions of the inventory units used in each inventory were substantially different. In 1971, a concept of "Area Types" was used which was intended to inventory recreation "resources" rather than developed facilities. The area type system was imperfect; it tended to mix apples and oranges, and the front feet of shorelines tallied had no relationship to public accessibility.

Today's (1982) inventory, on the other hand, counted shorelines in public ownership and "available for public use." It is a reasonably accurate base from which future trends can be measured, but not to compare with earlier inventories.

In spite of these shortcomings, it is possible to see the general trend of shoreline ownership. It is apparent from the data that the amount of publicly accessible beaches has increased over the life of the Shoreline Act. These increases are largely due to acquisitions funded in part by grants from the IAC.

Interagency Committee for Outdoor Recreation Funded Shorelines

Over the years, the IAC has funded approximately $104 million worth of acqusition projects and $135 million worth of development projects. A typical combination of funding is 50 percent federal, 25 percent state and 25 percent local.

A substantial portion of IAC funded projects has been associated with waterfront. This is because most local recreation plans and state agency programs give priority to water enhanced recreational opportunites. Figure 6 gives a detailed listing of shoreline acquisition and development on a county by county basis.

The acquisition and development figures are not additive. Many of the acquired areas become development projects a year or two later.

Saltwater Shorelines - In the 11 year period (1971-1982) since the passage of the Shoreline Management Act, 32 miles of saltwater shoreline have been acquired through the grant program administered by the state Interagency Committee for Outdoor Recreation. Shorelines have been acquired for

Figure 5

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION
INVENTORY OF PUBLIC SHORELINES

COUNTY	1971		1982	
	Feet Saltwater	Feet Freshwater	Feet Saltwater	Feet Freshwater
Adams		13,305		126,588
Asotin		229,090		281,160
Benton		337,335		439,112
Chelan		134,832		343,544
Clallam	303,972	22,356	796,691	105,157
Clark		169,958		349,479
Columbia		5,240		21,673
Cowlitz		187,113		134,993
Douglas		116,187		104,266
Ferry		124,900		35,150
Franklin		94,194		131,570
Garfield		1,456		9,696
Grant		602,528		639,778
Grays Harbor	5,600	139,090	522,389	177,975
Island	27,529	826	562,403	22,800
Jefferson	69,685	20,180	582,667	156,640
King	63,169	356,278	74,340	1,313,424
Kitsap	48,184	7,786	290,541	7,644
Kittitas		311,856		236,908
Klickitat		249,324		234,083
Lewis		121,043		202,210
Lincoln		371,940		507,035
Mason	33,851	68,868	306,753	79,586
Okanogan		474,213		987,829
Pacific	80,855	55,938	343,723	54,410
Pend Oreille		71,190		74,756
Pierce	52,373	136,658	44,286	591,037
San Juan	261,520	44,160	1,801,753	46,100
Skagit	64,047	85,686	93,669	503,983
Skamania		88,570		98,143
Snohomish	71,859	227,397	302,189	701,750
Spokane		185,515		181,892
Stevens		1,368,995		1,732,913
Thurston	16,110	79,720	66,060	39,960
Wahkiakum		36,078		63,346
Walla Walla		137,198		30,780
Whatcom	59,570	72,757	41,205	1,038,999
Whitman		11,219		42,130
Yakima		631,818		203,994
STATE TOTAL	1,158,324	7,395,797	5,828,669	12,052,493

Source: Washington Interagency Committee for Outdoor Recreation

Figure 6

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION
FUNDED SHORELINE PROJECTS 1971 - 1982
(Values in Front Feet)

COUNTY	Shorelines Acquired		Shorelines Developed	
	Feet Saltwater	Feet Freshwater	Feet Saltwater	Feet Freshwater
Adams	NA	-0-	NA	-0-
Asotin	NA	33,540	NA	8,490
Benton	NA	-0-	NA	1,000
Chelan	NA	9,794	NA	39,900
Clallam	4,040	7,863	4,040	4,130
Clark	NA	18,552	NA	88,188
Columbia	NA	-0-	NA	-0-
Cowlitz	NA	11,386	NA	10,830
Douglas	NA	-0-	NA	500
Ferry	NA	-0-	NA	-0-
Franklin	NA	-0-	NA	-0-
Garfield	NA	-0-	NA	-0-
Grant	NA	34,250	NA	16,472
Grays Harbor	26,284	16,135	2,670	11,470
Island	5,422	6,000	7,475	1,000
Jefferson	7,165	4,350	10,790	5,050
King	-0-	89,622	14,680	62,906
Kitsap	4,185	2,731	19,498	5,340
Kittitas	NA	27,920	NA	9,930
Klickitat	NA	36,000	NA	1,035
Lewis	NA	3,900	NA	10,540
Lincoln	NA	-0-	NA	200
Mason	2,395	1,361	1,000	5,476
Okanogan	NA	4,363	NA	22,870
Pacific	3,290	2,700	10,589	-0-
Pend Oreille	NA	2,300	NA	4,580
Pierce	4,215	7,540	5,135	8,700
San Juan	3,408	-0-	3,647	-0-
Skagit	79,571	19,941	12,109	23,736
Skamania	NA	5,630	NA	1,830
Snohomish	9,108	22,394	16,670	20,932
Spokane	NA	49,276	NA	15,687
Stevens	NA	3,000	NA	8,999
Thurston	3,447	24,401	17,031	11,606
Wahkiakum	NA	2,225	NA	3,710
Walla Walla	NA	-0-	NA	-0-
Whatcom	16,886	34,158	3,640	1,523
Whitman	NA	7,500	NA	8,250
Yakima	NA	90,460	NA	3,000
STATE TOTAL	169,416	579,292	128,974	417,880

Source: Washington Interagency Committee for Outdoor Recreation

public recreation purposes in every marine county except one (King County). The most acquisition activity has been in Grays Harbor, Skagit, and Whatcom counties. A substantial portion of this mileage is in one project: The Padilla Bay Marine Sanctuary - 12 miles of shoreline in Skagit County, although not all of it has upland access.

In addition to these acquisitions, the IAC also funds development projects. During the same period, projects were funded which affected 24 miles of shoreline. In some cases, these projects directly provided access facilities, making the publicly owned shoreline usable; in other cases the shoreline access was incidental to upland development. In all cases, it is probably accurate to say that the shoreline was made more usable for the public as a result of these developments.

Noteworthy is the fact that the most populous county of the state has not been able to add to its public shorelines by taking advantage of the IAC funding program. Presumably, this is because acquisition opportunities do not exist due to the already developed condition of King County's shoreline. On the positive side, nearly three miles of shorelines in King County have had related facility improvements through IAC funding.

Freshwater Shorelines - Since 1971, nearly 110 miles of freshwater shorelines have been acquired through the recreation grant program administered by the IAC. The acquisition of freshwater shorelines has been well distributed throughout the western and northeastern parts of the state, but a number of jurisdictions in southeastern Washington have not participated. No shoreline acquisition has occurred in the following areas: Adams, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Lincoln, and Walla Walla counties. Generally rural counties, they are not popular tourist areas, and the demand for providing public access is not high.

During this same period, almost 80 miles of freshwater shoreline was enhanced by recreational developments funded by the IAC. Presumably, these developments made the shorelines more accessible and usable by the public.

Change in Recreational Boat Moorage Capacity

One additional indicator of accessible shorelines data is included here for informational purposes. This is an inventory of boat moorage in the Puget Sound vicinity which, although not a precise measure of access, does indicate the general trend in public facilities and certainly shows the growth in recreational boating of the last few years. Boat moorage is also an example of the problem of exclusively reserving shorelines for a few users (boaters who are willing to pay).

In 1966 and in 1978, surveys were done to inventory the available moorage slips for small boats in the Puget Sound and adjacent waters. The results of these surveys were published in 1968 and 1980, respectively, by the U.S. Army Corps of Engineers.

The data show substantial increases in available moorage (see Figure 7). An increase of nearly 100 percent in moorage slips occurred from 1966 to 1978. In 1966, there were about 16,000 slips; in 1978 there were about 31,000 slips.

FIGURE 7

NUMBER OF MOORAGE SPACES
PUGET SOUND AND ADJACENT WATERS

	1966 1/	1971 (interpolated)	1978 2/	1982 (interpolated)
Clallam	515	1,670	3,336	4,290
Island	117	400	816	1,050
Jefferson	395	690	1,108	1,340
King	6,906	7,570	8,491	9,030
Kitsap	882	1,450	2,273	2,740
Mason	197	360	603	740
Pierce	3,523	3,710	3,958	4,100
San Juan	428	830	1,409	1,750
Skagit	961	1,540	2,380	2,850
Snohomish	1,168	1,810	2,725	3,250
Thurston	565	800	1,143	1,330
Whatcom	284	1,470	3,167	4,130
TOTAL	15,941	22,300	31,409	36,600

Source:

1/ Seattle District, Corps of Engineers, Pleasure Boating Study, November 1968.

2/ Seattle District, Corps of Engineers, Recreational Small Boat Moorage Study, October 1980.

A straight line interpolation was done to estimate moorage spaces in the period of shoreline management from 1971 to 1982. This results in about 22,000 slips in 1971 and over 36,500 in 1982 (a 64 percent increase). The 1982 figure is probably high since marina construction was no doubt slowed by the weakened economy in the last few years. Goodwin (1982) shows a figure of 26,794 slips for 1981, a somewhat lower value, which may be a more accurate representation of today's capacity. At any rate, moorage has increased substantially during the period of shoreline management and holds some significance to public access.

Many marinas leave their docks open for the public, although, in most cases, the public is not encouraged to visit the facilities. Some marinas are locked, with only moorage space renters having access. In these cases, there is usually a transient dock that is open to the public. Sometimes, ancillary facilities are constructed for public use, such as boat launching ramps, walkways on breakwaters, and even fishing piers, but the latter is usually only seen in association with publicly funded projects.

The general increase in available moorage is, however, indicative of an associated increase in public access. In fact, the condition is probably even better now as developers of marinas, especially those that are publicly funded, have become more enlightened about public access because of the Shoreline Management Act.

METHODS OF PROVIDING PUBLIC ACCESS

Access to shorelines can be obtained in a number of ways. Perhaps the most straightforward is for a public agency to purchase in fee the property needed for the access.

Public Fee Title Acquisition

Fee title acquisition by a public agency is the more desirable means of obtaining public access. Fee title acquisition, because all the landowners rights are acquired, virtually eliminates onsite conflicts between the public and private owner. There is no chance for misunderstanding over easement or permit provision requirements.

Fee title acquisition requires that a public agency, usually a parks department, have the authority and the means to assume ownership and management of the access area. Sometimes the acquisition burden may be assumed by a public works department, a utility or an improvement district of some kind. In all cases, fee title requires considerable capital expenditure of public funds (for acquisition and development) and the assumption of a perpetual maintenance expenditure which tends to increase over time.

Often, due to inadequate financial resources, jurisdictions are reluctant to become involved in acquisition programs to provide public access. The importance of public financing should not be diminished, however. The demand for shoreline recreational opportunities can only be met through a continued program of public acquisition.

Fee title acquisition requires a willing seller and that both parties be satisfied by the transaction's consummation. There are no legal obstacles to negotiate purchase as long as the acquiring agency has the requisite authority. However, there may be opposition from neighbors, taxpayers, and others who oppose public parks in "their" neighborhood and oppose removal of lands from the tax rolls.

Sometimes inducements can be created that will foster negotiated sales from otherwise unwilling landowners. They include purchase and lease back agreements and life estate arrangements. With the former, the public agency acquires the property then leases it back to the owner or a private developer to use within the scope of restrictions imposed by the public agency.

In this way, the goals of both parties can be achieved and the land is not totally removed from the tax rolls (taxes are paid on the assessed value of the lease).

With a life estate agreement, the owner retains residential or other use of the property until death, and the public obtains full future ownership. Usually life estates and public use can coexist during the tenancy of the agreement. Again, as with the other purchase agreements, the landowner continues to pay taxes on the value of his retained interest.

Public Less Than Fee Acquisition

Less than fee acquisitions are also useful tools for obtaining public access to shorelines. They usually take the form of easements granting the right of access to the public. Sometimes these may be acquired by purchase, such as in the case of development rights purchase. Here, a public agency purchases a portion of the rights a landowner has, which limits what he may do with his property. This kind of program is most often seen where the public wishes to maintain farm and open space lands in the face of urban sprawl. This arrangement is especially attractive for farmers who receive considerable payment for the development rights and also obtain a substantial reduction in property taxes.

Other times, the granting of an easement for public areas may be a required prerequisite to obtaining a building or substantial development permit. It is the effectiveness of this latter situation that is the primary concern of this evaluation, but first there are several other possibilities for public access that should not be overlooked.

Undiscovered Public Properties

Sometimes a local jurisdiction may be able to discover and utilize publicly owned properties that were purchased for some other purpose but on which public access would be compatible. For example:

1. Utility corridors -- easements are usually granted where pipelines are buried or powerlines are overhead, and there is often space at ground level which can be used for public access without conflict.

2. Road rights-of-way -- often, there may be enough space at bridge abutements to develop public access facilities or, in some cases, a right-of-way may be abandoned when a road is relocated and that old right-of-way can be utilized for access.

3. Platted and unused street ends and rights-of-way -- often, a right-of-way for a street will be extended to the water, but not developed. The street end becomes a "natural" access point. RCW 35.79.030 prohibits vacating street ends where they can be used for public park purposes.

4. Rights-of-ways in tidelands and harbor areas -- in many tideland areas streets were laid out but never developed. These are usually still in public ownership, and can become the basis for new access development.

5. Port facilities -- public port districts, although their principal mission is port business, usually recognize that as a public entity they also have an obligation to provide facilities for the general public. Port district provision of marinas, boat launches, and similar facilities is common. But port districts also provide public parks, access ways, and similar facilities. Historically, these facilities have been provided away from industrial waterfront areas, but recently there is a growing trend to provide public access to working port areas.

Access Over Private Lands

In many instances, a private developer will provide public access in conjunction with an industrial, commercial, or multifamily residential development. In these cases, the access area usually remains in private ownership, and public access is controlled by permit provision and/or an easement.

There are motivating factors that may cause a developer to provide public access. First of all, the local jurisdiction may be more inclined to approve his project if it includes public access. The developer may also obtain some tax advantages from creating an access. The latter usually requires dedication of the property in fee or less than fee to a public agency. A commercial enterprise, such as a store or a restaurant, may derive considerable benefit through good will and increased pedestrian traffic as a result of the access.

In some cases, access is justified by historical public use which should be maintained regardless of the kind of development.

On the matter of tax incentives, the federal income tax laws are structured to encourage charitable contributions by allowing a deduction against ordinary income equal to the value of the donation. Sometimes, the land can be worth more as a tax deduction than as a potential site for development, particularly where the real property has appreciated substantially over the years.

Tax benefits can also be used when bargain sales are consummated. In these cases, the owner donates a portion of the property and receives cash for the remainder. The owner has the advantage of both cash in his pocket and a tax deduction.

In addition to federal income tax advantages, it may be possible for the landowner to receive a reduction in property taxes as the assessed value of the real property should presumably be less. Such a reduction in assessment will not likely be automatic and may require considerable negotiation with the county assessor to get an adjustment for less than fee donations.

Public Rights to Private Shorelines

There are some shorelines within the state of Washington where the public may have acquired a legal right of use under one of the following doctrines: a) custom, b) prescription, c) dedication, or d) public trust. No attempt is made here to describe the ramifications of these concepts and those wishing additional information can refer to Johnson (1977) and Cooney (1978).

There is a dearth of case law relating to the application of any of these doctrines to shorelines in Washington state, but there have been cases in other states. With respect to the ocean beaches, the Washington Attorney General opined that the public had accrued a right of custom to the dry sand portions.

Figure 8. *A shoreline permit access. This development provides public access which helps alleviate the crowding at public parks as shown in Figure 3.*

It is the opinion of the Attorney General that "the public, vis-a-vis the private upland owner, has the right to free and unhindered use and enjoyment of the wet and dry sands area of the Pacific Ocean beaches, by virtue of a long established customary use of those areas." The wet sand area is defined as "that area over which the tide ebbs and flows on a regular, daily basis: generally below, or seaward of, the line of mean high tide." The dry sand area is defined as "that area lying between the line of mean high tide and the line of permanent visible vegetation." (The rights of public use do not extend over those areas within the external boundaries of the Quinault Indian Reservation.)

The fact that this opinion has stood without challenge since 1970 indicates that even without case law the doctrine has validity and is generally accepted.

Whether or not any of these doctrines could be applied to Puget Sound tidal shorelines is not known.

Meanwhile, it has been suggested that no public agency erect signs on the boundaries of public beaches to limit public travel. Signs, posting "no trespassing -- private tidelands" as have been installed by some agencies are clearly not in the best interest of the public. If a private landowner chooses to post his land, that is his business and his right, not that of the neighboring public agency. A public agency has the obligation of protecting public interests, which may include beach use rights established by one or more of the above-described doctrines.

Dedicated Access

Dedicated accesses are dedications of land by a private landowner for public access purposes coincident with development or subdivision and may be required by local ordinance.

The wording of conditions on permits is crucial. It is not enough to rely upon the fact that the developer has shown public access on his plans and the fact that public access is required by law. The permit should state explicitly that "public access as shown on approved plans shall be provided prior to occupancy of the proposed building." As used here, "occupancy" refers to final sign-off by a building inspector. It is important to require access at some point before final sign-off in order to keep a lever on the developer. Conditions should also include number, wording, and location of signs and even the prohibition of "no trespassing" or "no parking" signs.

At a minimum, the public access obtained as a permit condition, should be legally established by recorded easement. Access in which the only written record is the permit provision will almost certainly disappear in a few years, when the paperwork is archived or even shredded. A jurisdiction should require that an easement be recorded with the county auditor, as a condition on the deed to the property, or on the plat map for the subdivision. In this way, the easement will appear in future title reports and

will be transferred through subsequent sales. An easement also has the advantage of eliminating or reducing liability which may not be the case when the access is established by permit provision only.

An easement "runs with the land" (stays on the title through ownership changes) which is its principal advantage, but it is not cast in stone. If, at some future time, the jurisdiction determines the easement is no longer compatible or desirable, it can terminate the arrangement. This may occur when an initial nonwater-dependent use is superseded by a water-dependent use where the public access easement is incompatible.

To prevent future misunderstandings and subsequent loss of access, the easement must be quite specific as to what is granted. The following elements must be included in the easement document:

1. The precise location of the easement. A properly written legal description of the easement area, or the easement's width, center line bearings, and length. This requires that the easement be surveyed and tied in with permanent survey monuments so that it can be relocated and remarked as necessary at any time in the future.

2. The purpose and scope must be explicit. The public's rights must be clearly stated. An easement that only permits the right of passage on a confined walkway may not allow the public any use rights. Such a condition may be very confusing to the public if they can walk near docks, picnic benches, and the like, yet not be allowed to use the facilities. The persons negotiating the easment must give careful thought and visualization to the physical arrangement the easement creates so that these kinds of situations can be avoided.

3. Who may use the easement must be specified. If the easement is for the general public, it should be so stated; if it is for the residents of a subdivision, the specifics of the community access must be stated.

4. The operation and maintenance responsibility should be specified. An area that will be maintained by the private landowner should have some maintenance criteria specified.

5. Signing requirements must be specified, and the responsibility of placing and maintaining the signs should be stated.

6. Specify what will be provided. Will the grantor provide a concrete walkway, a dirt path, or other facility? Minimum specifications must be agreed upon and written into the easement.

7. Specify conditions of use. An access may be limited to daylight hours, may have seasonal restrictions, or other special conditions that should also be written and recorded.

Payments in Lieu of Dedicating Access

When the provision of access at a particular development is not practical or desirable, yet access dedication is required, it may be advantageous to have a payment made in lieu of developing the access. These payments can be used to develop access at more suitable locations.

There are problems with in lieu of payments. First of all, such payments probably would not raise enough funds to acquire and develop access at other locations. The construction of an access at the development site will probably be considerably less expensive than finding a new site, acquiring the land, and developing the access - even if the former requires difficult construction such as stairs down a bluff.

Second, there are legal restrictions on how the in lieu of money can be used. In 1982, the legislature passed a bill (SB 4972 amending RCW 82.82-.020) that authorized in lieu of payments on a voluntary basis and specified criteria which must be met.

The criteria include such things as expenditure within five years, and use of funds only for capital improvements to mitigate a direct impact (of the development). Most importantly, the law requires that the local jurisdiction be able to establish that the dedication is necessary as a direct result of the development or plat.

This law is relatively new. There are many unanswered questions pertaining to its application, some of which probably will not be determined without judicial review. Meanwhile, a local jurisdiction will need to determine, to its own satisfaction, interpretations on the application of the law as it pertains to public access -- a subject which is beyond the scope of this report.

Figure 9. *Public access sign. This blue and white sign or something similar is recommended for standard adoption by the Department of Ecology to mark all public accesses.*

PRINCIPLES OF PUBLIC ACCESS

An early observation made by the author is that some access dedications, although established in the legal sense, do not result in attractive public facilities. The net result is that few people visit and use these areas.

This observation is perplexing in that the demand for access to the shorelines is high, as evidenced by the multitudes that visit public parks and by the great lengths many people will go to get to the beach, even where not developed for public access. Yet, the author observed that some dedicated access areas do not seem to be popular with the public.

What is absent at dedicated accesses that tends to keep the public away? The missing ingredient seems to be visitor comfort. An access must be a comfortable, attractive place to visit. The visitors must feel they belong there in order for the access to work.

Respect of private property and the "Thou shalt not trespass" tenet ingrained into our beliefs mean that unless carefully executed, an access may not work as a public facility.

It is the author's observation that most of the discomfort stems from factors of space, design, and perceived (on the visitor's part) ownership.

A public park is a comfortable place to visit because it is spacious and because it is obviously public property, a fact reinforced by signs. A public access may be a comfortable place to visit <u>if</u> it is spacious enough and if it is obvious that the public has a right to be there (again: signs). Take away the space or the signs and the visitor will lose the needed comfort level.

A note of caution: Low use is not always bad and should not be automatically considered an indication of visitor discomfort. Indeed, it may be desirable to create access purposely designed for low use for those visitors who desire a more "natural" experience than is afforded among hordes of people.

These observations led the author to prepare the following principles about public areas:

1. The public access area must be a comfortable place to visit in that the visitors must feel they "belong." This feeling can be reinforced by signing, but signs cannot overcome the negative effects of inadequate space and design deficiencies.

2. There must be a physical separation of the public and private space so the public will clearly know the extent of their domain <u>and</u> know they are not infringing on private rights. This separation can be achieved through space and by screening such as by landscape plantings or fences.

3. The public space must be of sufficient size to allow passage <u>and</u> allow the visitors to stop, linger, and contemplate the setting.

4. The public access area must be designed so the visitors will feel safe from such things as industrial activities, family dogs, and irate homeowners.

AREAWIDE PLAN FOR PUBLIC ACCESS

An important finding of this study is that the most successful public access programs are guided by areawide plans for public access. Although titled in different ways, the plans usually deal with shoreline segments, such as an urban waterfront where public access is a desired objective.

Attempting to impose across-the-board access standards to all shorelines within a particular jurisdiction may result in a plan that will fail. The plan needs to be flexible, in that homogenous shorelines are identified and appropriate access standards developed for each. The most effective way of doing this will probably be to plan the access in detail for those shoreline accesses that are most critical and do a policy plan for the remaining shorelines.

The detail plan might identify specific sites, specify rights-of-way widths for walkways, set spacing standards for connecting upland access ways, and other such criteria as the local jurisdiction deems appropriate.

A policy plan, on the other hand, may do little more than set objectives and procedures, much as most current master programs do.

SPATIAL AND DESIGN REQUIREMENTS

An important consideration about any proposal to provide public access is the amount of space that is needed to make the access usable and desirable. While an access may be passable in the physical sense, it may be so narrow and confining as to be an intimidating place to visit. Examples of the latter exist; some are described in the section on case examples. In short, the access must be of sufficient size, width, and length to meet the intended objectives. Accesses, being public areas, must have adequate room for the anticipated number of persons that might be expected to visit the site at one time.

Coincident with size is design, which includes both physical layout and aesthetic values. The use of scale, form, texture, color, detail, and light can make a space an attractive access or make the area undesirable. These are characteristics that a site designer will utilize to make the space a comfortable place to visit.

No attempt is made in this report to cover the art of site planning, but a few design criteria are given so as to provide a measure of space requirements which may be applicable in negotiations for public access.

The amount of space needed and the design features of an access will vary in two ways. First, the physical setting will dictate the kind of access that is appropriate. Is the area a natural, undisturbed shoreline or is it highly modified as a central waterfront? Each of these access situations will have different needs for space and design.

Second, what kind of development is being contemplated by the substantial development permit? An industrial development will have different access requirements than a commercial area. A residential area will have still different needs.

In the following section, the access requirements for each of the several kinds of shoreline developments are discussed in terms of spatial and design features.

Commercial

Commercial developments such as stores, restaurants, and offices will be found in urban environments. The shoreline is usually highly modified with bulkheads, piers, docks, wharfs, pilings, and similar structures. The kinds of public access provided at these areas will probably consist of man-made walkways, piers, floats, and landscaped uplands. The amount of space needed for public access can be established by setback requirements. A minimum width walkway in this situation should be adequate for wheel chairs - 5 feet. This same standard will allow small groups to pass without interference and confusion. Combined with some landscaping and "elbow room" a minimum width for the setback would probably be 15 feet, but 25 feet or so would be much more desirable. With these kinds of developments, in contrast to multifamily residences, there is not the strong need for separation of private and public space, but there should be some physical separation between the commercial facility and the public area. This does not have to come from an obstructing device, but could be softly done with plant materials and open space.

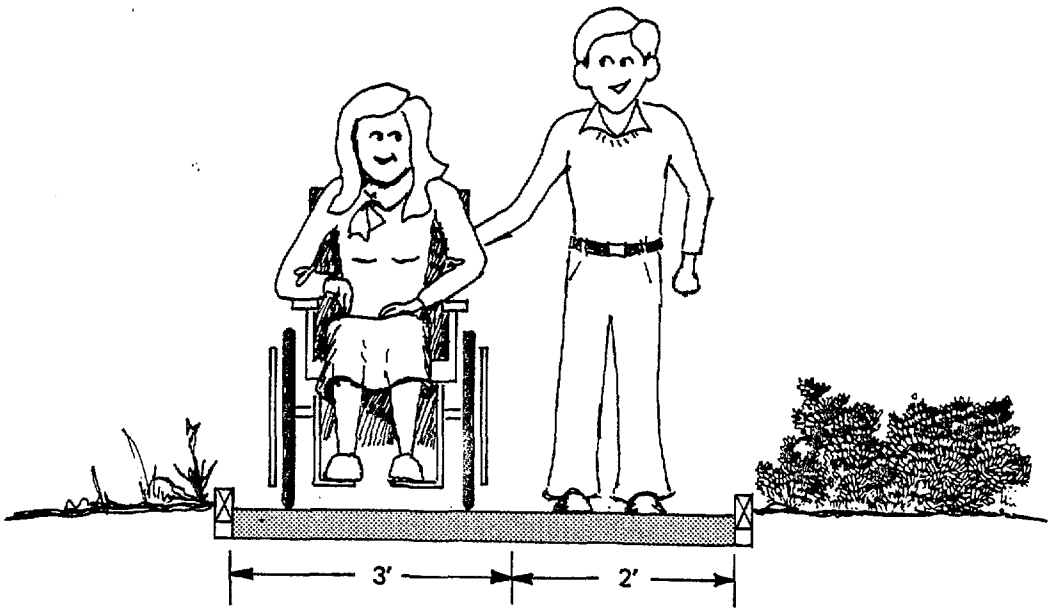

Figure 10. *Required minimum dimensions for a public walkway, especially where wheelchair access is needed.*

Industrial

The single most important consideration about public access in industrial waterfront areas is safety. It is not wise to have the public enter areas of industrial activity; indeed, most such entry would violate laws and insurance restrictions. The problem, then, is how can public access needs be met, with adequate safety and without interfering with the industrial activity?

There are two ways to accommodate this problem. First, provide a physical separation by locating the public access on unused portions of the industrial waterfront, and second, concentrate on providing view access. View access can often be established so the public can see what is going on, a natural curiosity, and be far enough away to be safe and out-of-the-way. Associated interpretive exhibits can be used to explain what is being seen, which may be to the provider's public relations advantage.

The minimum space requirements for industrial access will vary widely, depending on the physical layout and the nature of the industrial activity.

If the activity is loading and unloading ships of logs or containers, then the view can be from a distance, because the activity is large scale. On the other hand, if the activity is unloading a fishing boat, the view needs to be closer, because the public will want to see the individual fish. The first instance also means the view would probably be better from a high level (a platform or tower) and in the second instance, from a low level, say at ground level.

Viewing towers (Figure 11) are a relatively new innovation on waterfront areas in the state of Washington. Several towers have been constructed at waterfront locations in recent years. Viewing towers are a good way to obtain a high level and safe vista point of a working waterfront.

Residential

Most residential subdivisions do not provide access for the general public, but they do provide community access for the residents of the subdivision. The community access would normally consist of items like a community beach, walking paths, community parks and playgrounds, all owned in common by the residents. The typical situation is to have a homeowners association to supervise and maintain the common areas.

Some city and county ordinances require that a minimum percentage of the subdivision area be set aside as community open space, and/or allow lot size reductions in proportion to the amount of common open space dedicated, providing certain minimums are met. An example is found in King County's Shorelines Management code:

> *The foregoing lot area and width standards may be further reduced in direct proportion to the amount of usable area dedicated as common open space within the shorelines of the state as long as the net density remains the same. The common open space shall provide physical access to the ordinary high water mark for the residents of an approved subdivision; short subdivision or planned unit development; provided, that in no case may the lot*

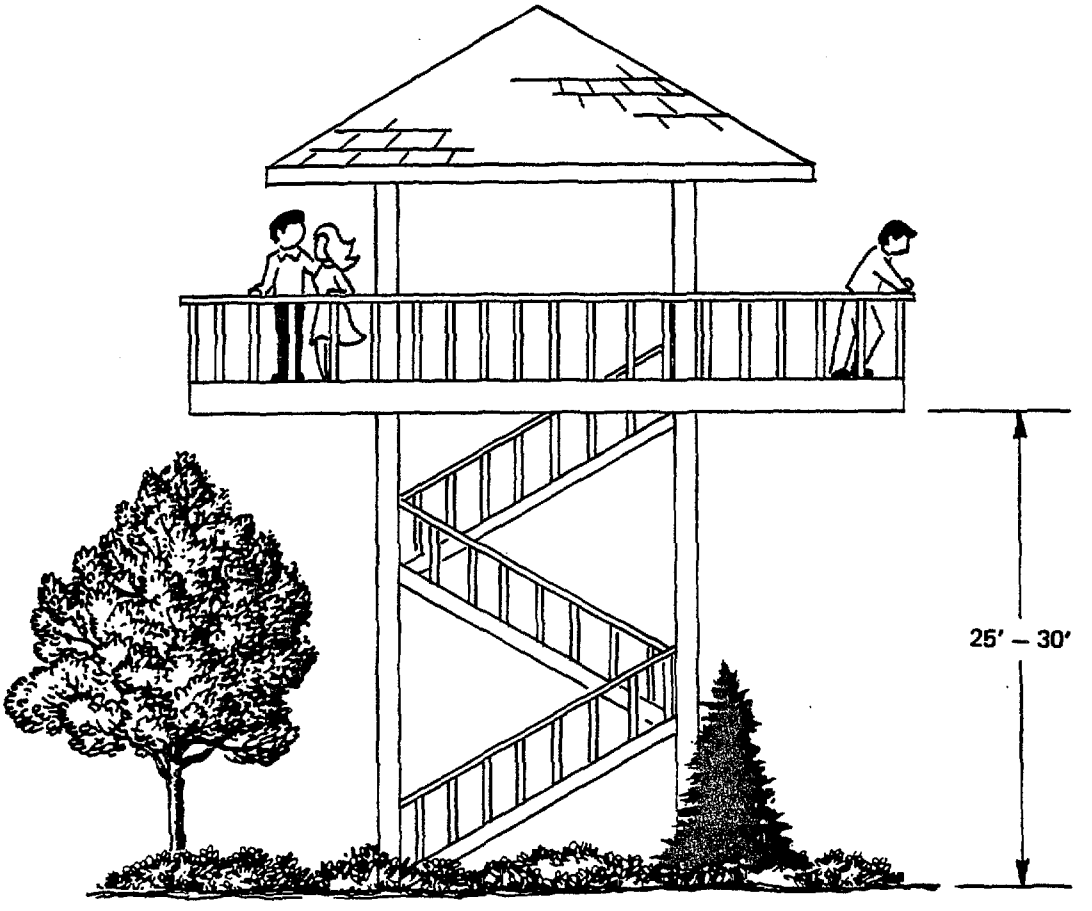

Figure 11. *Typical viewing tower of the kind that has been installed at several waterfront locations in Washington.*

standards be reduced below the lot standards required by Title 21 (the zoning code) for the zone classification in which the lot(s) is (are) located.

Kitsap County's zoning ordinance serves as an example of a community open space requirement for residential planned unit developments:

> *(a) A minimum of 10% of the total area of the Planned Unit Development shall be dedicated or reserved as common open space land.*

The county gets good cooperation for dedication because a developer can get up to a 150 percent density bonus with open space dedication. Normal density of 1 unit per 2.5 acres changes to 1 unit per acre with 50 percent open space dedication.

Although access is not normally provided with single family projects, such development is usually subject to setback requirements which help to preserve the aesthetic value of the shorelines. While this does not provide physical access, it is important from the standpoint of the view public users may have from the water surface (boaters) or from adjacent shore-based viewpoints.

Multi-family Projects

Public access is often required with multi-family projects, including condominiums and apartments. Case examples of these kinds of accesses are discussed later in this report.

Providing access for the general public at these kinds of developments is beleaguered with numerous problems. For example, most condominium owners prefer not to have the general public in their "back yards." The privacy issue is a major concern which can be ameliorated to a degree through space and design. When space is inadequate for a physical separation from the condominium structure, the condominium owners are uncomfortable with public entry, and the public feels uncomfortable with being so close to private family areas. In these cases, although the legal right may be established, most segments of the public will stay away because of the perceived invasion of privacy.

A minimum setback of 25 feet would allow 10-15 feet for the yard space of the dwelling units and 10-15 feet right-of-way for the public easement. These dimensions should be regarded as an absolute minimum to prevent undue intrusion on the private space, but they do not allow for very usable public areas. More desirable would be a setback requirement of 30 feet or more.

A Few Dimensions

A walkway from a public road down to a beach, if intended to be negotiated by wheelchairs, should not have a gradient steeper than 8 percent. A walkway not intended for wheelchairs can be as steep as 15 percent; any steeper and steps must be incorporated. Five feet should be considered the minimum walkway surface width in either case.

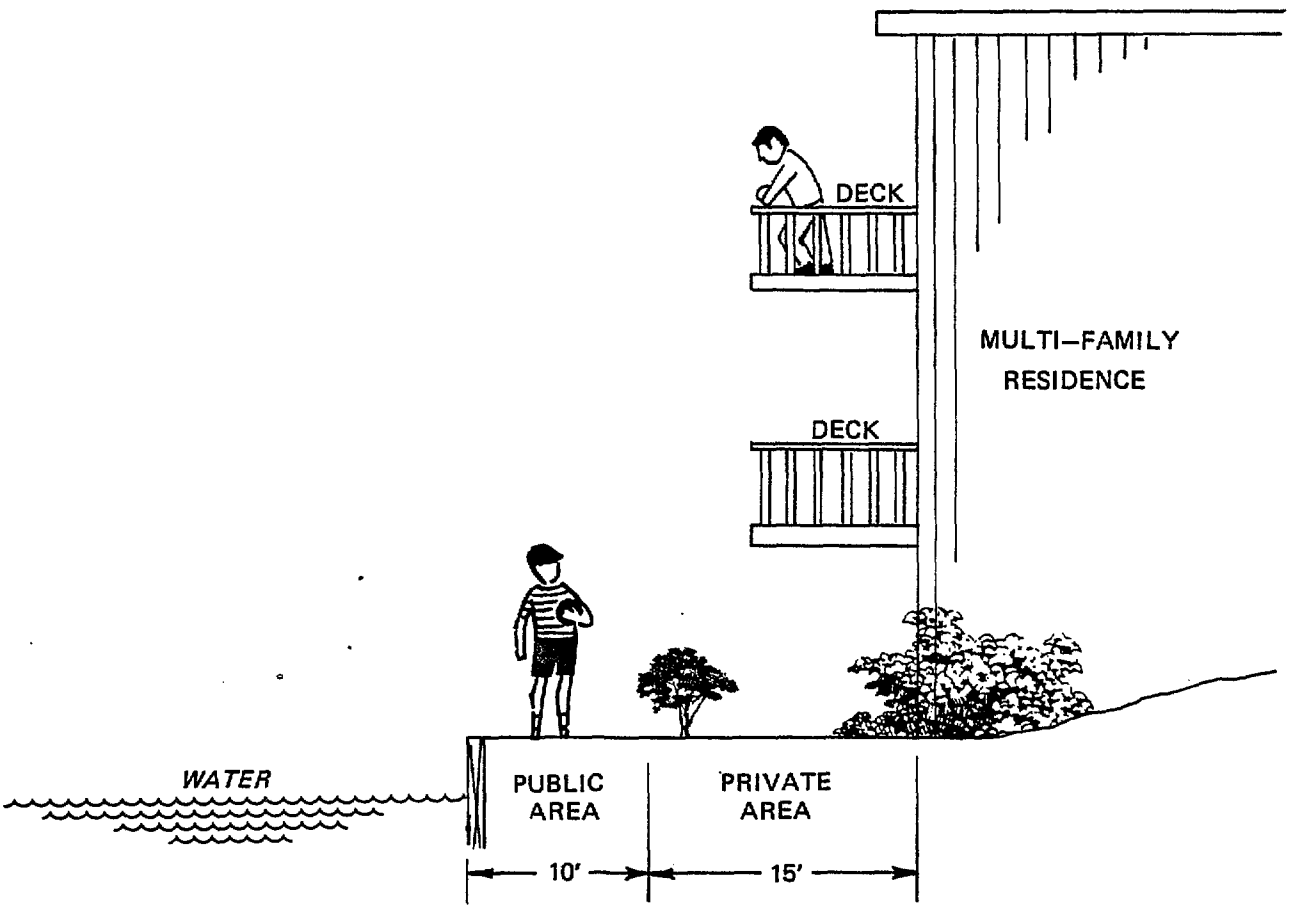

Figure 12. *Minimum dimensions for public and private spaces as might be found with a public access associated with a multi-family development.*

Stairs can be used to gain access down bluffs providing the line of descent does not exceed 64 percent. When the grade is not too steep, intermittent steps can be anchored in the slope (e.g. railroad ties). Stairs should not be less than three feet in width.

Stairs are expensive to consruct and expensive to maintain. On some coastal areas, it may not be practical to build a stairway that will withstand winter storms. This means that not all beaches can be accessed.

Combinations of boardwalks, sidewalks, and stairs can often be used to obtain safe access to beach areas otherwise not accessible.

The minimum width for an access right-of-way tying the shoreline area to the first public street should not be less than 10 feet. This allows 5 feet for the sidewalk or path and 2.5 feet on each side for buffer and separation area. A typical plan of public access right-of-way in a commercial or multifamily area is shown in Figure 13. The connecting access ways may not be needed between every building but should be spaced to provide reasonable walking distances.

Bicycle Paths - Bicycle paths, popular access features along shorelines, have special design requirements. A two-way paved bicycle path should not be less than 8 feet in width. The maximum grade should be 5 percent with 2 percent considered a desirable maximum for sustained grades. Figure 14 shows that the minimum right-of-way needed for a bicycle path is 12 feet.

Consideration must also be given to allow extra space if the bicycle path is a multiple-use facility where there will also be pedestrians, wheelchairs, dog walkers, etc. In these cases, a right-of-way of 15-20 feet would not be unreasonable. For example, along a shoreline, the extra space could be placed on the water side so people could have room to stop and enjoy the water's edge.

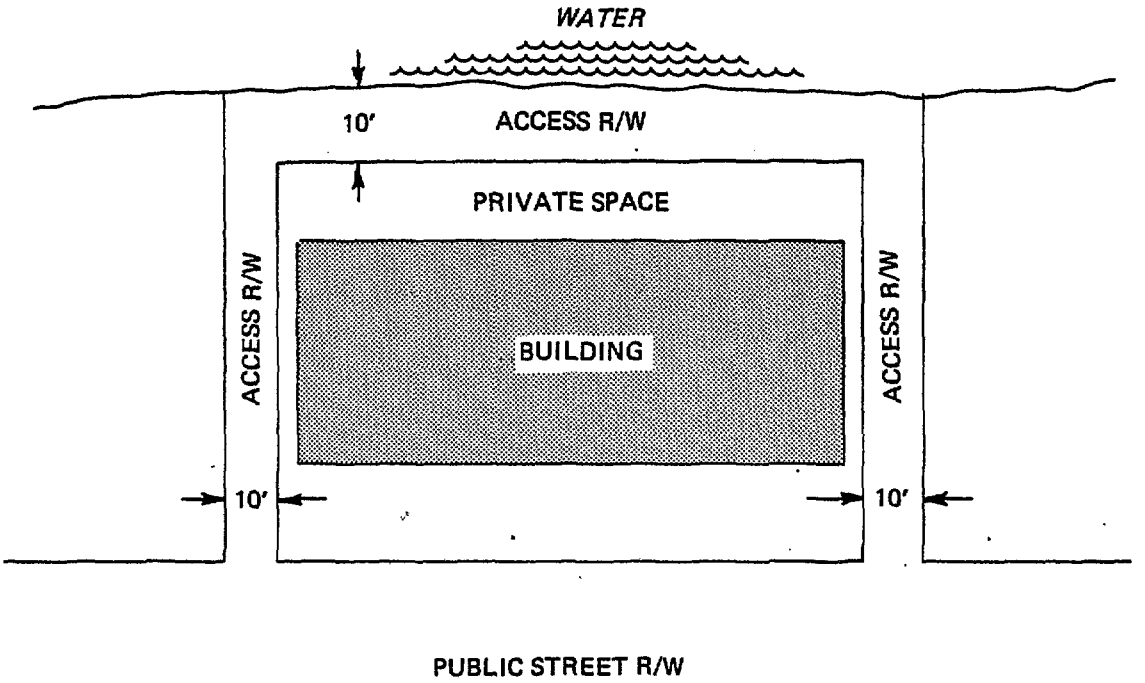

Figure 13. *Minimum dimensions for a public access around and behind a typical multi-family building.*

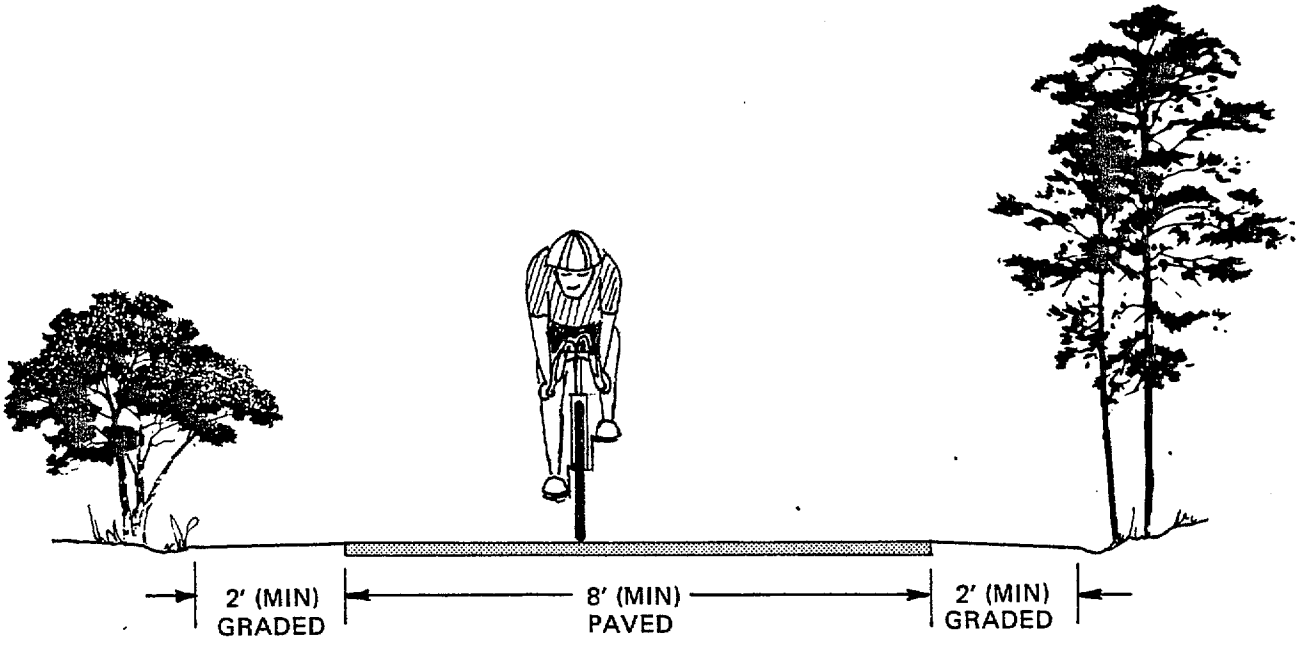

Figure 14. *Minimum right-of-way requirements for a bicycle path.*

CONSTRAINTS AND CONFLICTS

There are a number of factors that are often cited as reasons why access cannot be provided. Most of them stem from perceived conflicts over public use vs. private rights. The first is the liability question.

Liability

Much of the opposition by property owners to providing public access is based on their perception of liability. Landowners simply do not want to assume the legal liability which may result if a visitor is injured. The common understanding seems to be that by providing access the owner is "inviting" the visitor to his property and, therefore, is responsible should something happen to him. The owner, by not providing access, augmented by the extreme of putting up "no trespassing" signs, avoids liability because the visitor is in the wrong. While these arguments are often used, the liability problem can be reduced or eliminated by undertaking certain actions.

Since 1972, in the state of Washington, there has been a law (RCW 4.24.200-210) that limits the liability of landowners toward recreational users. The law was written to encourage landowners to make their lands available to the public for recreation. This law applies where there is no mandatory dedication of public access, but protects those landowners who allow public use out of the "goodness of their hearts."

If an easement is granted to the public, the public then has a legal right to be there, and thus, the grantor's liability is reduced or eliminated. This is an important argument for requiring that all accesses be legally established by recorded easement.

An access which is provided by permit provision without being recorded clouds the liability issue, and the owner is not as clearly protected as under an easement.

In all cases, the landowner has an obligation to make the public access area reasonably safe from known dangerous conditions. Normally, such hazard situations probably would not exist, except in working industrial areas. In these cases, the landowner would be wise to provide public access safety features such as fences, walkways, and appropriate warning signs.

Trespass

Many neighboring property owners adjacent to proposed accesses object because of the potential for trespass onto their private lands and waters. Their objections are not unfounded and occur most often when the access area is inadequate, such as a street end, and the demand for access high. Inadequate space and design criteria often contribute to these conflicts, but a lack of planning logic in providing the access can also be a factor.

Lack of planning logic occurs when a development is required to provide access, but such access does not tie into some overall plan or scheme for public access. The importance of guiding access development by an area wide plan for access was found to be critically important to a successful program.

Depreciative Behavior

Many opponents of public access fear loud noise, raucous parties, littering, vandalism, and other types of depreciative behavior. It is not uncommon to see such things as graffiti, broken sinks, toilets and urinals, and destroyed signs in public parks and accesses. The reaction of landowners is understandable, but much can be done to minimize the problem. The usual way of minimizing these kinds of behavior is to close the access at night, patrol the area, and keep a high level of maintenance.

Vandalism tends to breed vandalism. Keeping facilities in good repair, and removing or painting over graffiti immediately helps to keep the problem in check. The initial design is also important; a sturdy, attractive, well-designed facility will not be vandalized as much as one that is poorly designed. Likewise, a facility that malfunctions, such as a toilet, will quickly become the target of vandals.

Most access areas can be simple, functional designs without complex fixtures or features that invite vandalism. A well-designed pathway with some landscaping and simple sturdy signs is often all that is needed. Elaborate lighting, signs, benches, and restrooms usually are not needed in ordinary access sites.

Access facilities adjacent to restaurants and similar commercial enterprises will probably not have many problems because of the perceived scrutiny that exists. Restaurant workers, and patrons as well, unknowingly provide a "surveillance" function which will curtail depreciative acts. In addition, some marinas allow "live ins" as a way of reducing vandalism.

On the other hand, some kinds of access may invite depreciative behavior. For example, a public viewing platform in a waterfront area may be largely deserted at night, creating an environment ripe for vandalism. This may require that the area be patrolled or watched to ensure people do not make illicit visits. Closing the area works well if there is no demand to use the area at night. If demand for use exists, closing may in fact stimulate depreciative behavior, rather than eliminate it as intended. Sometimes just the opposite tack works; that is, open the area for public use at night, light it well, and encourage people to use it. In this situation, the visitors tend to be their own self-patrol and enforcement.

A case in point is Central Park in New York City in the 1960's. It had become a haven for crime. It was not safe to visit, even in daylight hours. Then the city embarked on a program of promoting public use of the park. By conducting public events, even at night, they brought the people to the park. It worked. The crime element moved out and once again Central Park became a place people could safely visit (perhaps not by Northwest standards!).

In this region, some problems have surfaced in public parks and with a few access sites but, for the most part, depreciative behavior is an overstated problem which does not require drastic New York City style action.

Acquisition and Development Financing

The cost of providing adequate public access to shorelines can be high if the only means used is public financing. The acquisition of prime waterfront parcels for public parks is not only a costly way to provide access but desirable parcels may not be available at any price. Public financing does not answer the trade-off caused when private use of shorelines blocks the public's access to public waters.

As discussed earlier in this report, much has been accomplished in recent years with public funding, mostly by grants administered by the IAC. These kinds of projects will continue to be financed but at a much reduced scale due to the economy and the lack of suitable acquisition opportunities. In fact, the IAC is now placing greater emphasis on development of already acquired lands rather than acquisition of new properties.

Unfortunately, the obligation to preserve public access shorelines cannot be met with current capacity of public funding. The use of permit authority to require public access under the Shoreline Management Act is a means by which the right of public access can be provided as a trade-off for private developments in the shoreline without attempting to compensate by public acquisition. The shoreline program must take on an even greater role as the demand for private developments increase and available shorelines decrease.

This means the state should strengthen the processes of implementing the public access policies of the Shoreline Act in order to ensure that local governments will use the provisions to their greatest advantage.

Maintenance and Operating Cost

Recurring maintenance costs are often cited as reasons for not providing public access. Initial construction dollars can be budgeted as part of overall project development cost, but once the contractors are finished there is often no suitable means for maintaining the public access.

Typical needs include sign replacement, vandalism repairs, policing of litter, pickup of garbage, and general repairs as the facility deteriorates with age. In some cases, there may be a homeowners' association that can assume these responsibilities; in other cases, they may be done by employees of restaurants or other commercial establishments.

In some instances, the operation and maintenance (O&M) has been taken over by a local government agency, such as a parks department. Most of these agencies are strapped for funds and will usually refuse any added burdens. In contrast to acquisition and development, there are no grants-in-aid financing programs for O&M cost.

Sometimes a portion, or all, of the O&M cost can be recovered by instituting a user fee. User fees are not uncommon at boat launches, moorage slips, and similar situations where a user/operator interface occurs, at which time a fee can be collected. Fee collection is usually not practical for beaches, esplanades, open space, and shoreline parks because of the multiple entry points.

The Conflict: Water-Dependent vs. Nonwater-Dependent Uses

Although the Shoreline Act has accomplished much in providing public access, it has been critized for not successfully reserving the shorelines for water-dependent uses. This issue is usually confined to urban and developed waterfronts where former water-dependent uses are being displaced. An often raised aspect of this issue is that the provision of public access to the shoreline is used as a lever to obtain approval of nonwater-dependent uses. For example, a proposal may be made to locate a restaurant on the waterfront. The developer, knowing of the public access objective and of the favorable political attitude toward public access, proposes to provide a neatly designed public access facility coincident with his restaurant development. He knows he would never get a restaurant by itself approved, but he also knows that the provision of public access, in an area where it is limited (not unusual) is such a "carrot" that the administrative body can hardly turn the proposal down.

This issue has spurred considerable controversy in some localized areas and is much broader than just public access. It is beyond the scope of this report to do more than acknowledge the issue as a matter of concern to some people.

CASE EXAMPLES

Case examples were selected to illustrate good and bad features of providing public access. The cases show that a successful access facility is dependent on much more than a simple policy statement in a master program. The best cases are those where committed local planners, supported by an involved citizenry and a positive political climate, have worked effectively within the system to make maximum gains for the public. In these cases the public access provisions have resulted in several substantial access gains that otherwise probably would not have occurred.

Other examples show that even where access policies are implemented and permit provisions imposed, the resulting access is less than desirable for public use. This occurs for a number of reasons including inadequate signing, insufficient public space, and lack of an overall plan to make the access meaningful.

The use of these examples is not intended to pick on any particular jurisdiction; in fact, specific identification of the sites was not desired, although many may be evident. The examples were selected to illustrate good and bad features of public accesses with the hope that future projects can be improved from this knowledge.

Commercial Access

Several examples of commercial public access were studied. Photos are included for some of these. Access in commercial areas will be mostly used by patrons of the business; others may feel uncomfortable visiting unless special design and planning features are included. The best examples are those that are part of an overall access master plan, or waterfront revitalization project where the access is continuous for a substantial length of shoreline.

The most common commercial developments that provide access are restaurants. Shoreline restaurants are quasi-public places established to maximize the public's enjoyment of the amenity -- the water and the view. Sometimes the access area becomes an extension of the restaurant with dining area spreading into an outdoor eating area. This may lead to conflicts between patrons who have "paid the price" and nonpatron access users. This points out the need to have a definition of the restaurant space and the public space although in contrast to residential situations, the definition can be subtle.

A substantial amount of commercial development in the shoreline has been through waterfront revitalization projects. Often the development of restaurants, shops, and offices in revitalization projects displaces and precludes water-dependent uses. This is due in part to economics but also because developers will attach public amenities to their proposal which helps to ensure permit approval. The issue of nonwater-dependent vs. water-dependent uses as it pertains to access is discussed elsewhere in this report. A number of examples exist where public access has been provided with commercial developments. Most of these have been accomplished with varying degrees of success from the public's standpoint.

An example is shown in Figures 16 and 17. Public access was provided here as a permit provision. Currently, no signs exist to indicate the area is open for public use and what public does visit it (usually restaurant patrons) are intimidated by the physical layout to feel they are trespassing. Signs in the adjacent parking lot state, "Parking for . . . customers only." Noncustomers cannot park near the access. Even if that problem is overcome, visitors stand in front of expanses of one-way glass and cannot see who may be watching from inside. This is a case where an access exists in legal (permit provision) fact, but the practical utility gained is minimal.

The access is also a dead end. Visitors walk a narrow pathway, step onto a small deck (technically not part of the access) and end up with nowhere to go except retreat or to make their way through an unsightly service area which is not part of the access.

This access needs three improvements to make it a comfortable place to visit:

1. A wider public space with a better physical separation from the building;

2. A change of the building's exterior -- no one-way glass, <u>or</u> compensate with greater physical separation and landscaping; and

3. Making the access into a continuous line of travel which would tie into another access to make a waterfront walkway or at least continue the access around the building to exit on the opposite side.

To be fair, this particular access was one of the first dedications ever accomplished under shoreline management; presumably the jurisdiction involved is now more knowledgeable about access provisions.

<u>Industrial Access</u>

The industrial areas of seaports seem to attract much public attention. The hustle and bustle of loading and unloading ships is something people are curious about. People want to get close enough to see what is going on, yet safety considerations usually preclude close public scrutiny. Some port districts have tried to deal with public use by constructing public parks, boat ramps, and walkways away from the industrial areas, but these kinds of actions do not satisfy the public's natural curiosity to see what is going on.

The attitudes of port district officials vary with respect to public areas. On one hand, some districts feel that as public entities they are obligated to provide public use facilities. The most public spirited allow public use of piers that are not being used for ship loading or unloading. In one port, the piers are used by many people for fishing, lunch breaks, and just plain loafing when not being used for port purposes.

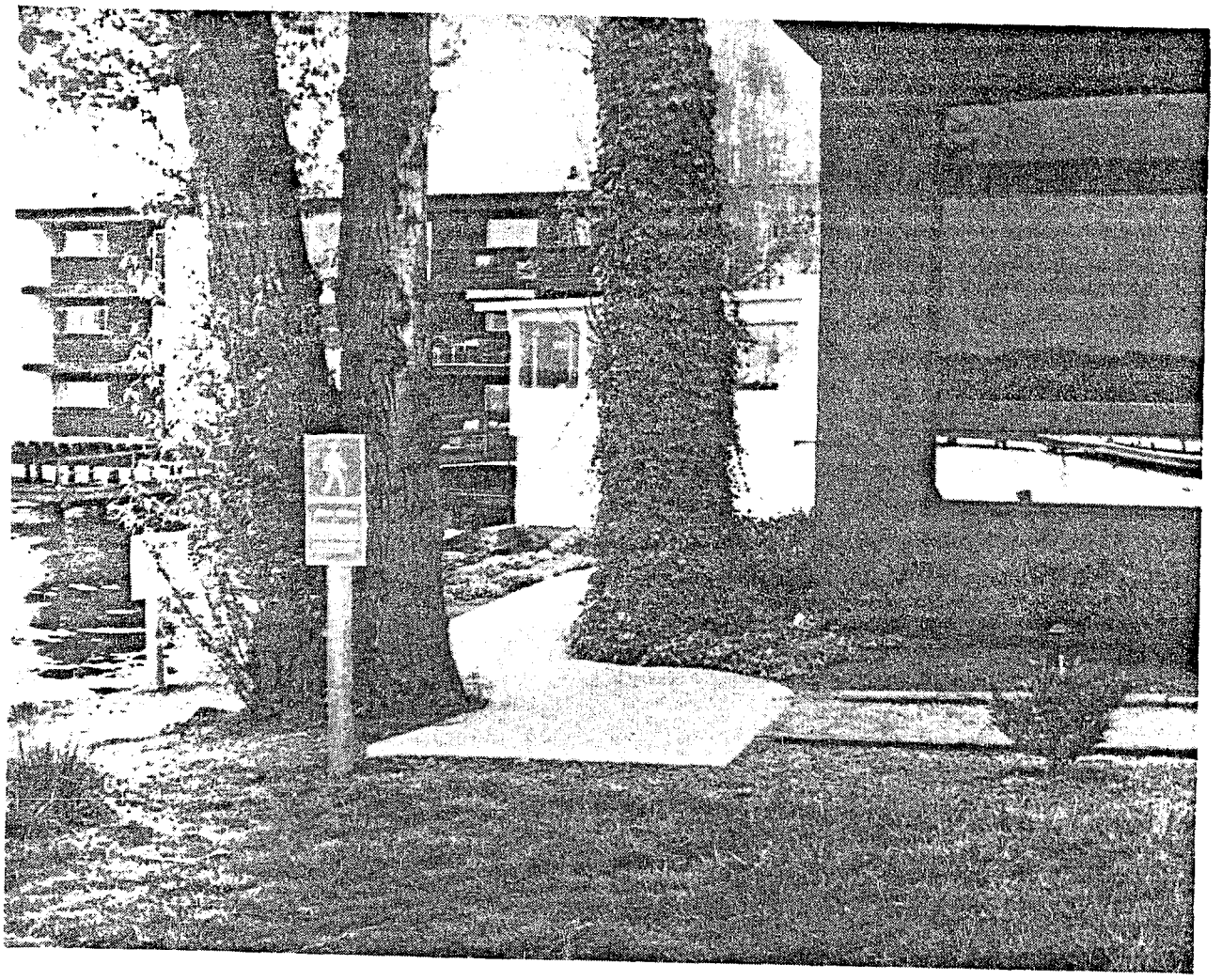

Figure 15. *Public access in conjunction with a restaurant. This narrow sidewalk by itself is not an attractive access, but is part of a plan for continuous access along a waterfront. When completed, it will make sense and will provide a delightful waterfront walkway. The easement for this access is 15 feet in width.*

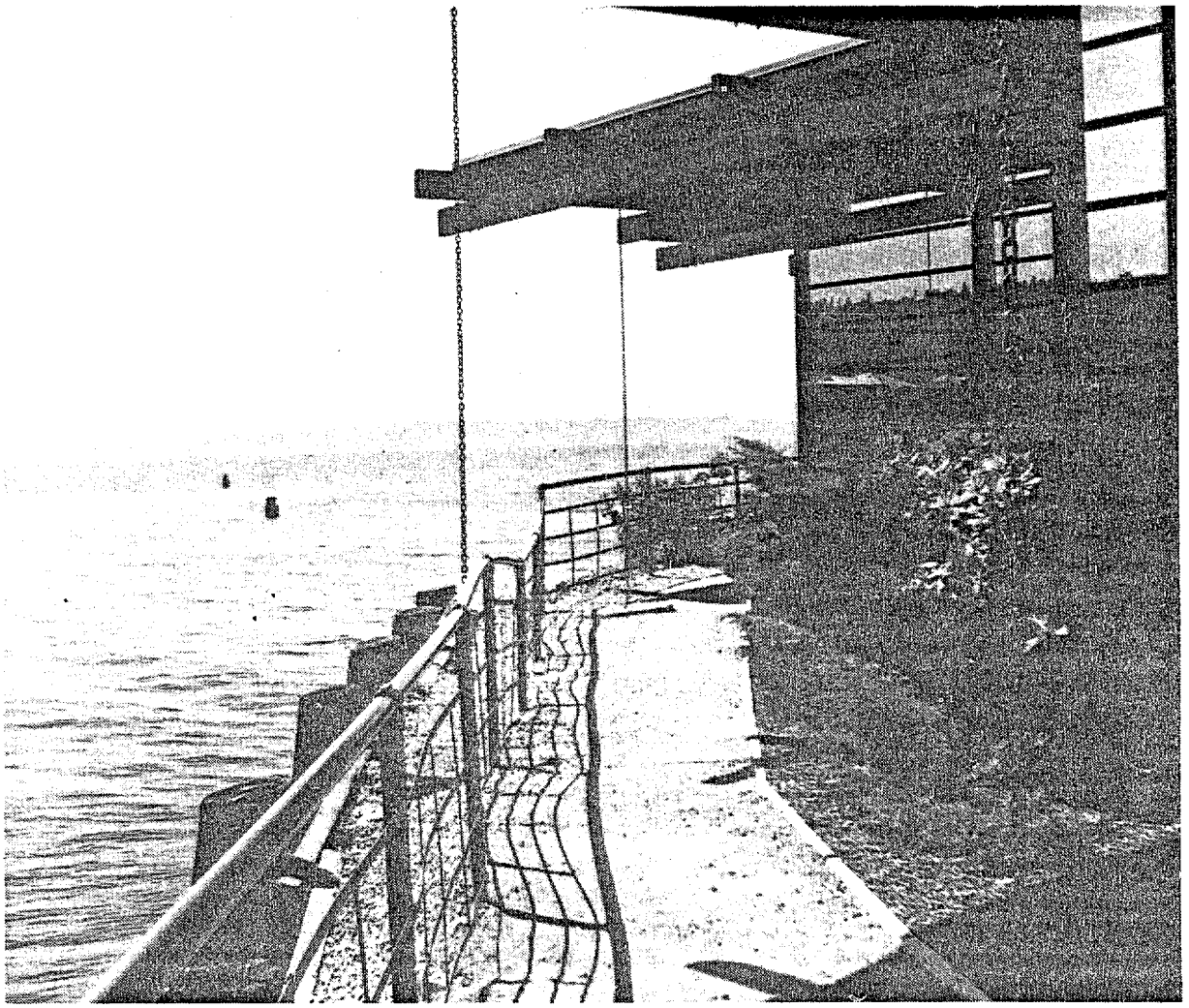

Figure 16. *Public access in conjunction with a restaurant. This access has design deficiencies which reduce the comfort level for public visitors -- including insufficient space and one-way glass on the building.*

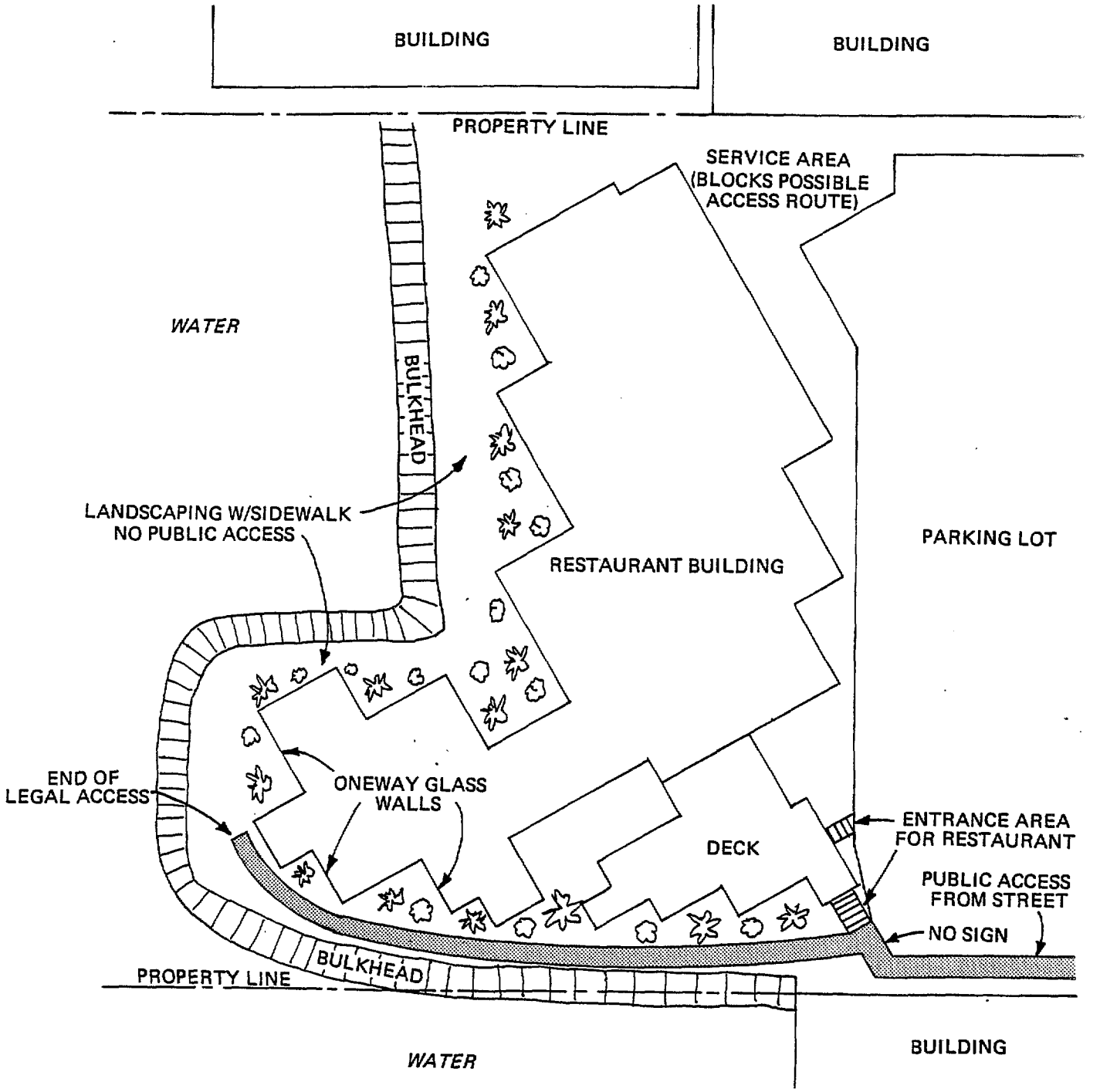

Figure 17. *Diagram of access at a waterfront restaurant showing major deficiencies. Ways to improve this access are discussed in the text.*

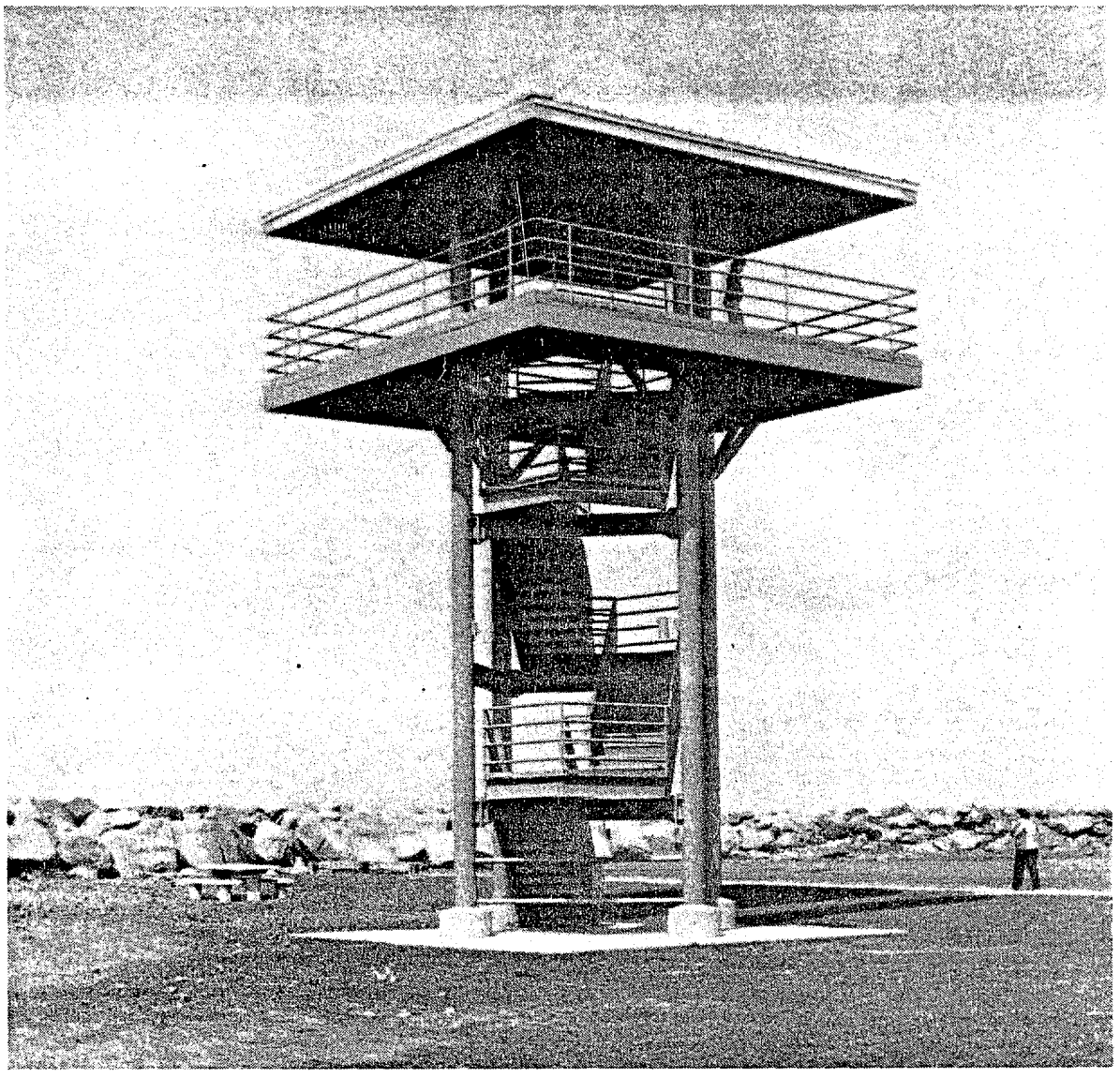

Figure 18. *Viewing tower. Towers can provide high level views of water areas such as ports not otherwise accessible to the public. The viewing platform is about 28 feet above ground level.*

On the other hand, certain port districts maintain they are in the port business and not the people business. These districts have been reluctant to provide public facilities and usually have not done so unless forced under state and/or local laws, such as shoreline management.

An innovation in industrial access is high level viewing towers (see Figures 11 and 18). Several have been constructed at waterfront areas to provide high level vantage points from which to view industrial seaport activity. Most of the towers require lengthy flights of stairs to reach the viewing platform. This means disabled visitors often are unable to use the facility or enjoy the view.

Viewing towers are considerably more expensive than ground level accesses. The viewing tower shown in Figure 18 costs approximately $118,000.

Viewing towers provide view access to areas that would not otherwise be accessible. The industrial harbor areas are a case in point. These areas are not safe for public visitation yet the public has a natural curiosity about what goes on. Properly designed viewing and interpretive areas can do much to satisfy the public's curiosity and also provide an opportunity to educate about waterfront use.

The Port of Seattle tackled this problem with an innovative approach. Rather than conventional towers, they constructed large periscopes of steel tubes and mirrors to give a view at ground level from a high perspective. Wheelchair-confined visitors only have to roll up to a convenient window and see a view from a vantage point some 25 to 35 feet higher. The viewing periscopes are expensive to construct (each cost about $50,000) and do not accommodate large groups of visitors, but they provide an opportunity that might not be possible otherwise.

Interpretive exhibits are provided at Seattle's Pier 48 viewpoint. The provision of interpretive exhibits is unusual at public access sites. These exhibits heighten the visitor's experience and provide an opportunity for the port to educate the public about its mission.

The public acceptance and use of this facility is not yet known. It only opened for public use in May 1983 and has not been widely advertised. The author would guess that as it becomes known it will become popular, especially with the "lunch hour" crowd from nearby office buildings.

The Port of Seattle's viewing facility probably would not have been constructed without the Shoreline Management Act. The Pier 48 viewing area is a direct result of the Shoreline Act's public access requirements and subsequent negotiations between the city of Seattle and the port.

The applicable shoreline permit provision reads as follows:

> *That final plans for the proposed elevated public viewpoint at Pier 48 be submitted to the Department for review and approval before construction begins on Pier 48 work authorized in SMA 77-18 or before January 1, 1978, whichever is earlier; and that the subject viewpoint be completed on or before the completion date of the Terminal 46 develoment.*

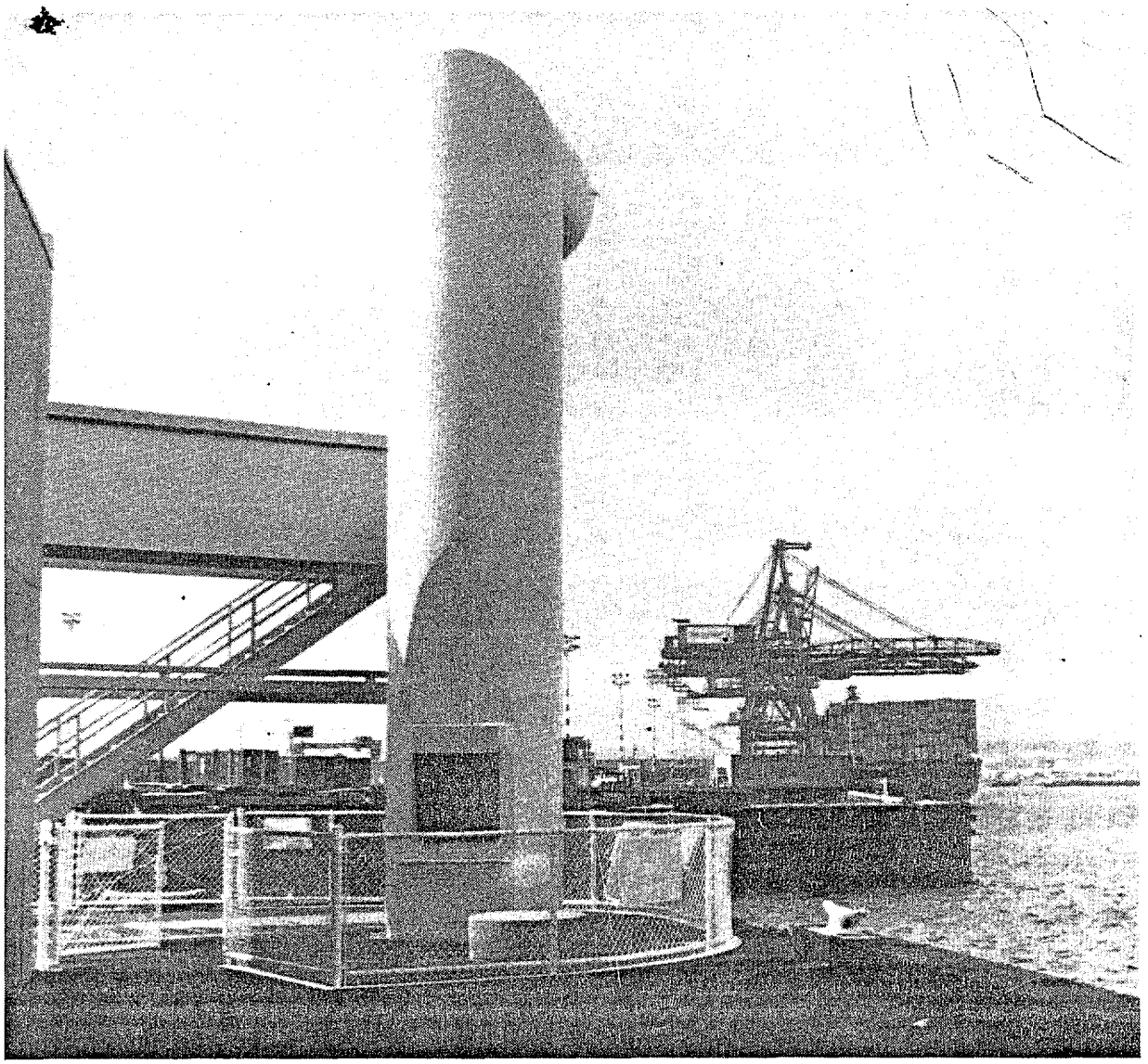

Figure 19. *Viewing periscopes. This periscope looks directly into a container loading area. Nearby interpretive exhibits explain the port activities that are viewed.*

The high cost of providing access at industrial areas may preclude access provisions at each and every facility in major port areas. A master plan for access in a port area could provide a means for locating and developing a few high quality accesses at the most strategic locations for maximum public benefit rather than providing a number of mediocre, less than satisfactory facilities.

The importance of having a master access plan was found over and over again to be one of the keys to a successful access program.

Residential Access

General public access in single family residential areas is usually excluded except for some cases of planned unit developments and some subdivisions. The most usual situation for a residential subdivision is the provision of community access. On the other hand, multiple family apartment and condominium developments in the shoreline zone often require general public access.

The best example this evaluation uncovered is that of the city of Kirkland. In Kirkland, which fronts on Lake Washington, several shoreline permits have been conditioned for public access. Figure 20 shows the public access at a condominium in Kirkland.

The principal advantage Kirkland has in its successful program is the existence of an access master plan. The plan is used to show how each project fits with the whole. The plan is far from completion, but Kirkland has, to date, accomplished significant public access objectives. Unfortunately, the program cannot proceed any faster than substantial development permit applications are submitted. Some of the key parcels probably will not be redeveloped for many years to come. Meanwhile, there is likely to be a degree of frustration with the current accomplishments.

Although Kirkland's program is pointed to as a success, the accesses that have been provided are not without shortcomings. Infringement of public and private space is the major detractor. If at all possible, the public space should be greater and a definition made between it and the private backyard space. In Kirkland's situation, insufficient space between the city street and the water made it impossible to achieve optimum setbacks to best meet public access objectives.

The language used by Kirkland in its shoreline master program is as follows:

> *POLICY 3 -*
> *Public access to and along the water's edge should be required in the design and construction of multi-family structures, subdivisions, into five or more lots, and planned unit developments occurring on the shoreline and provided for use by the public except where access to or along the water's edge is demonstrably not required.*

Figure 20. *Public access at a condominium. This walkway is a public access. Although somewhat narrow, it does meet the essential elements of signing, of being a part of an overall master plan, and of separation of public and private spaces (The latter is achieved by elevating the private space one story).*

USE REGULATIONS:

1. *Public access to and along the water's edge will be from a public right-of-way or park and appropriately designed.*

2. *When the structure(s), subdivision or planned unit development is adjacent to a street end or public park, access to the water's edge may be waived, but not along the water's edge.*

3. *When the structure(s), subdivision or planned unit development has developments on both sides that are not physically able to provide access along the water's edge, the water's edge public access may be scheduled for a later date when feasible.*

Another example of providing public access is the Harbour Village development on the north end of Lake Washington. This development consists of a residential condominium and a marina (Figure 21). In the process of obtaining a shoreline permit, public access in the marina area and a fishing pier was negotiated. The public access provides a boardwalk from a nearby county park to a public fishing pier and to a future commercial area where a restaurant will be developed. The area is nicely designed with ample separation (landscaping and fence) of the public walkway and the private space. The fishing pier and the walkway out to the pier (Figure 22) is somewhat confining due to chainlink security fences.

The easement is recorded on the face of the plat -- a segment of the plat map is shown in Figure 23. The shoreline permit also contains the following language with respect to the public access:

> *The applicant shall guarantee that public access to the shoreline from N.E. 175th Street and from the King County Kenmore Log Boom Park abutting the ordinary high water line along the entire shoreline of the subject property except for the boat hoist and fueling facility in the east 150 feet will be available in perpetuity....*
>
> *The applicant shall include within the required access and internal circulation plan design features which shall cater to handicapped individuals. Such feature shall minimally include, for example, curb cuts for wheelchairs, access ramps or elevators to the various facilities, and reserved parking stalls close to the more frequented buildings....*
>
> *The applicant shall provide a recorded public easement from the ordinary high water line to, and including, the breakwater facility. Said easement may stipulate that public access only be authorized during daylight hours The reauired public access easement shall be for fishing and visual access to the water only.*

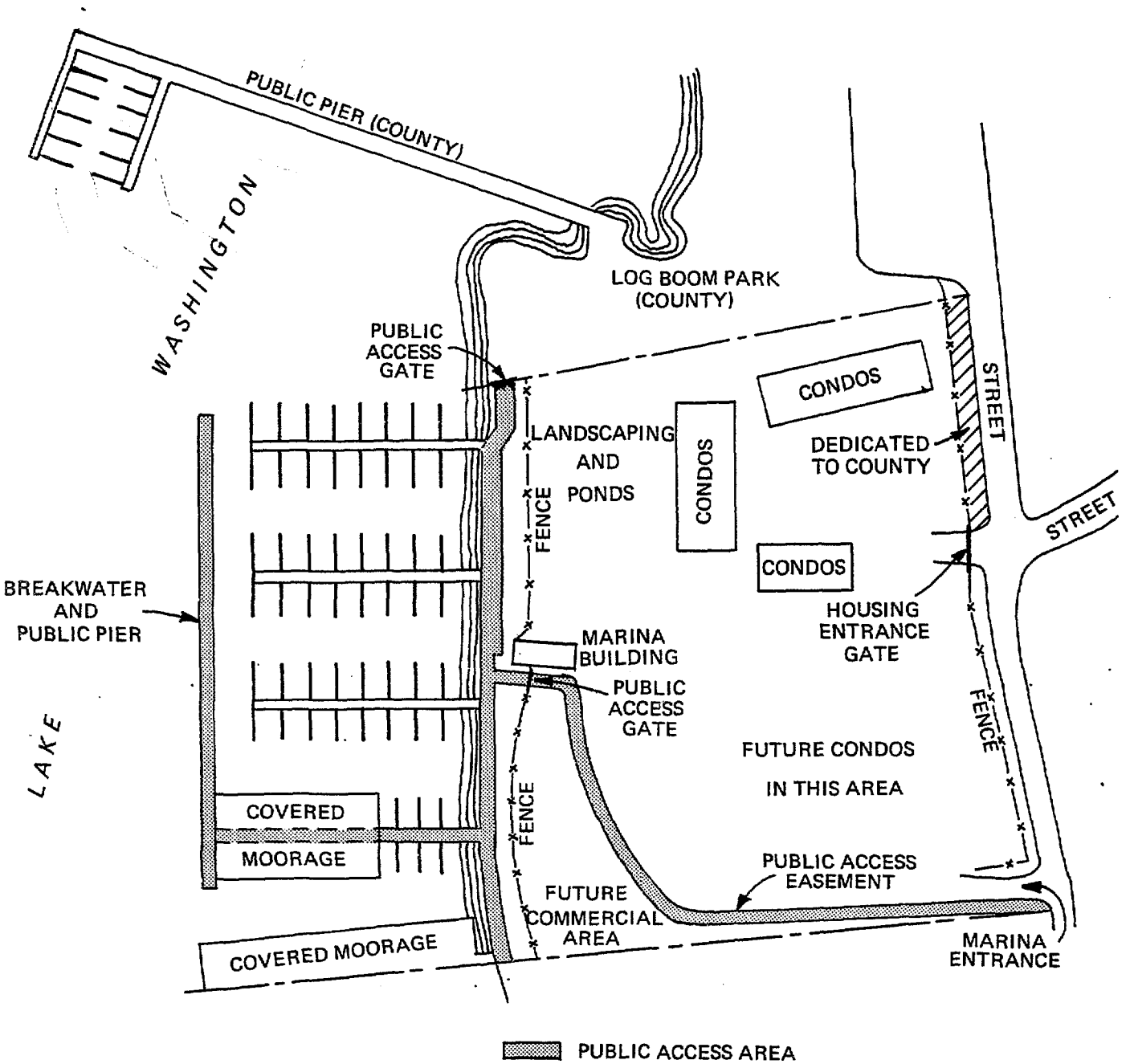

Figure 21. *Harbour Village Marina generalized plat map. The recorded public access easement area is shown by the shaded area.*

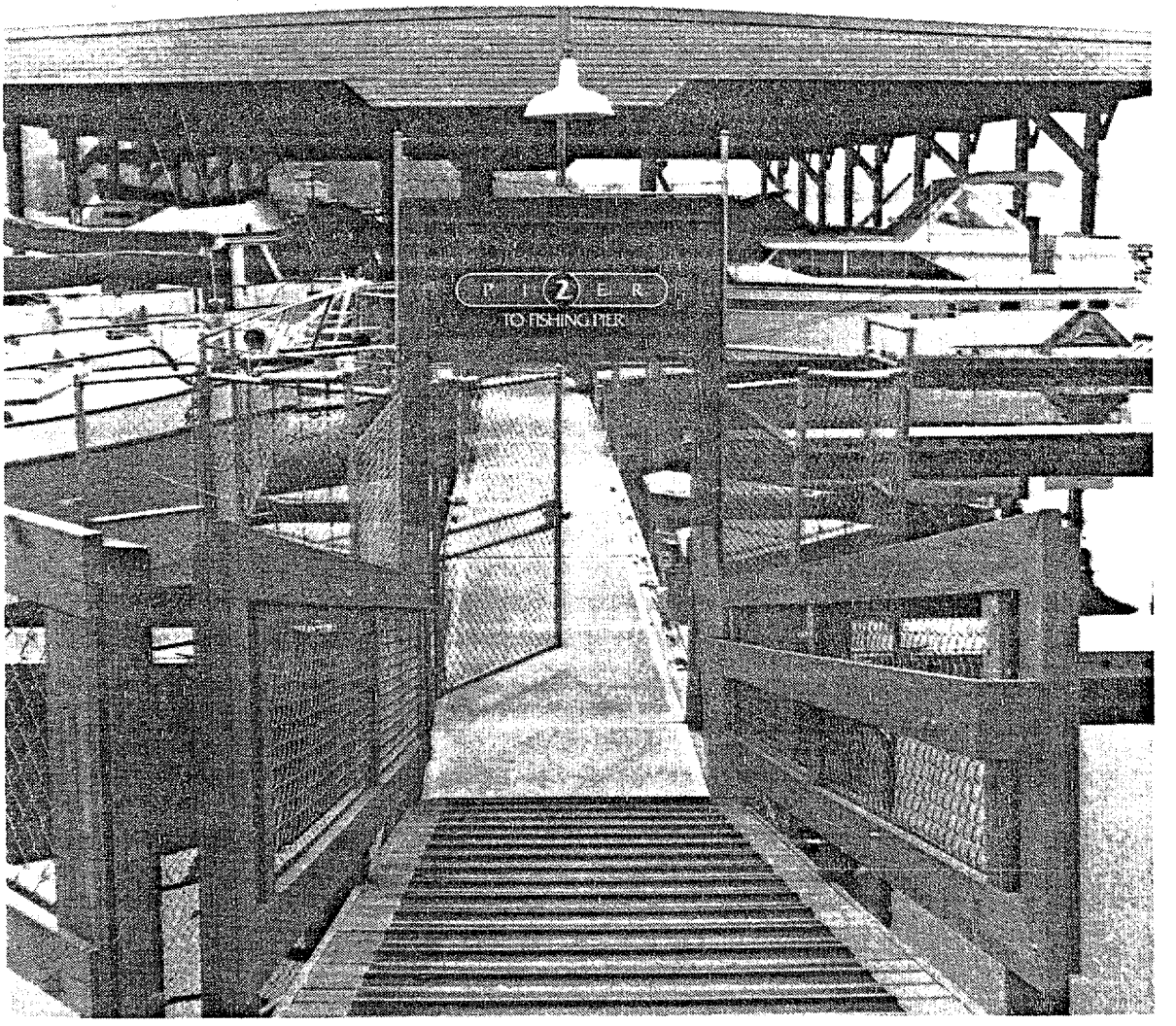

Figure 22. *Public fishing pier. This walkway to a public fishing pier is a public access. Although somewhat intimidating to visit because of fences and layout, the legal access is established (see text about a problem).*

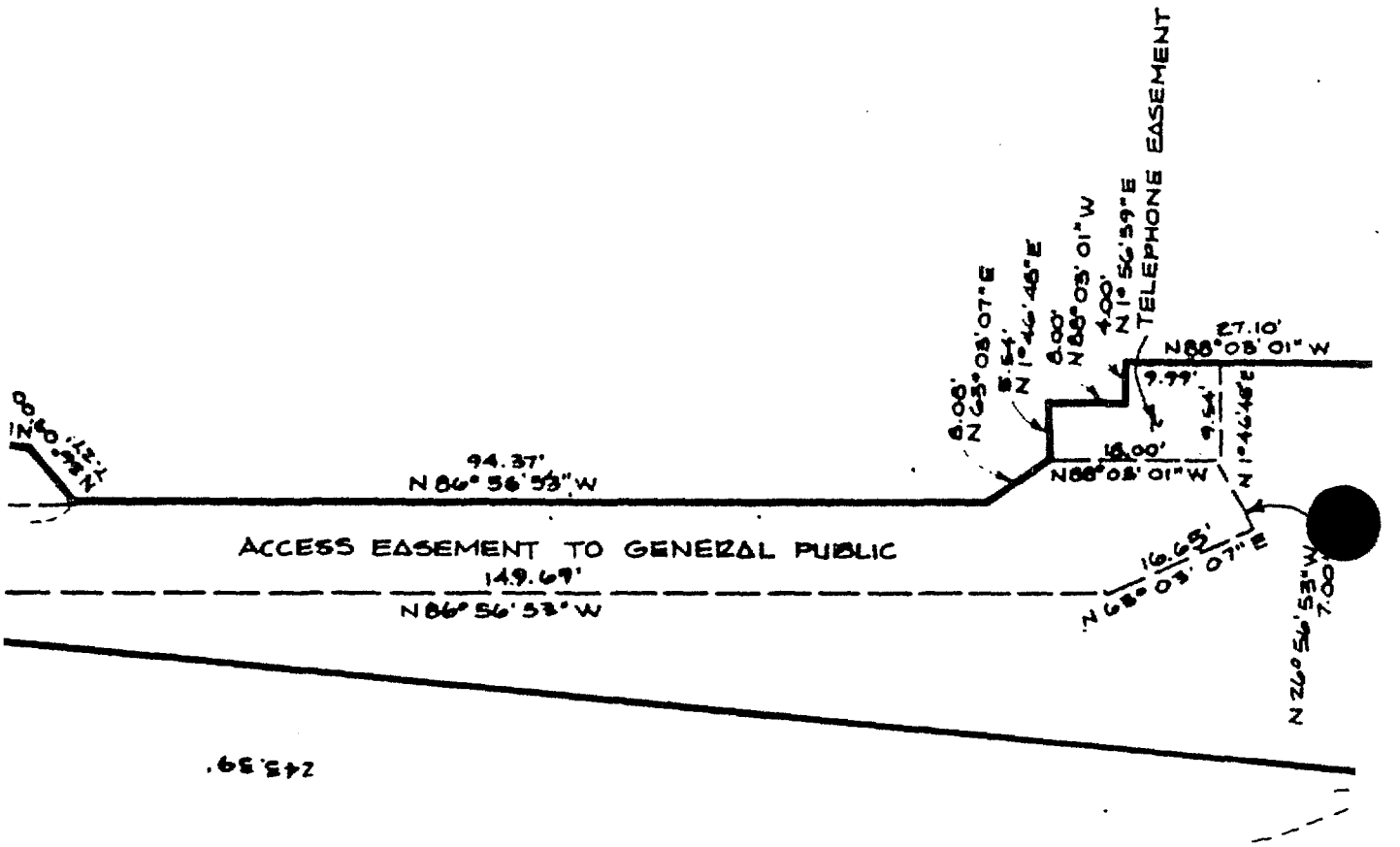

Figure 23. *A portion of the Harbour Village plat showing the public access easement.*

The county effectively covered all bases in negotiating the public access. An easement was recorded on the face of the plat, signs were required, the public space was clearly delineated, and the access was limited to daylight hours.

The project developed a snag when the developer locked the main public access gate and signed it for no entry (Figure 24). The county has issued a notice of violation, and at the time of this writing, no response has been received from the developer.

This problem points out the need to anticipate all possible events and the need to have adequate signs on the public access. No sign was contemplated on the gate. A sign stating the gate is for public access during daylight hours might have prevented this problem, <u>or</u> at least when the gate was locked, the public would know about it. As it is now, most visitors have no idea the gate is supposed to be open.

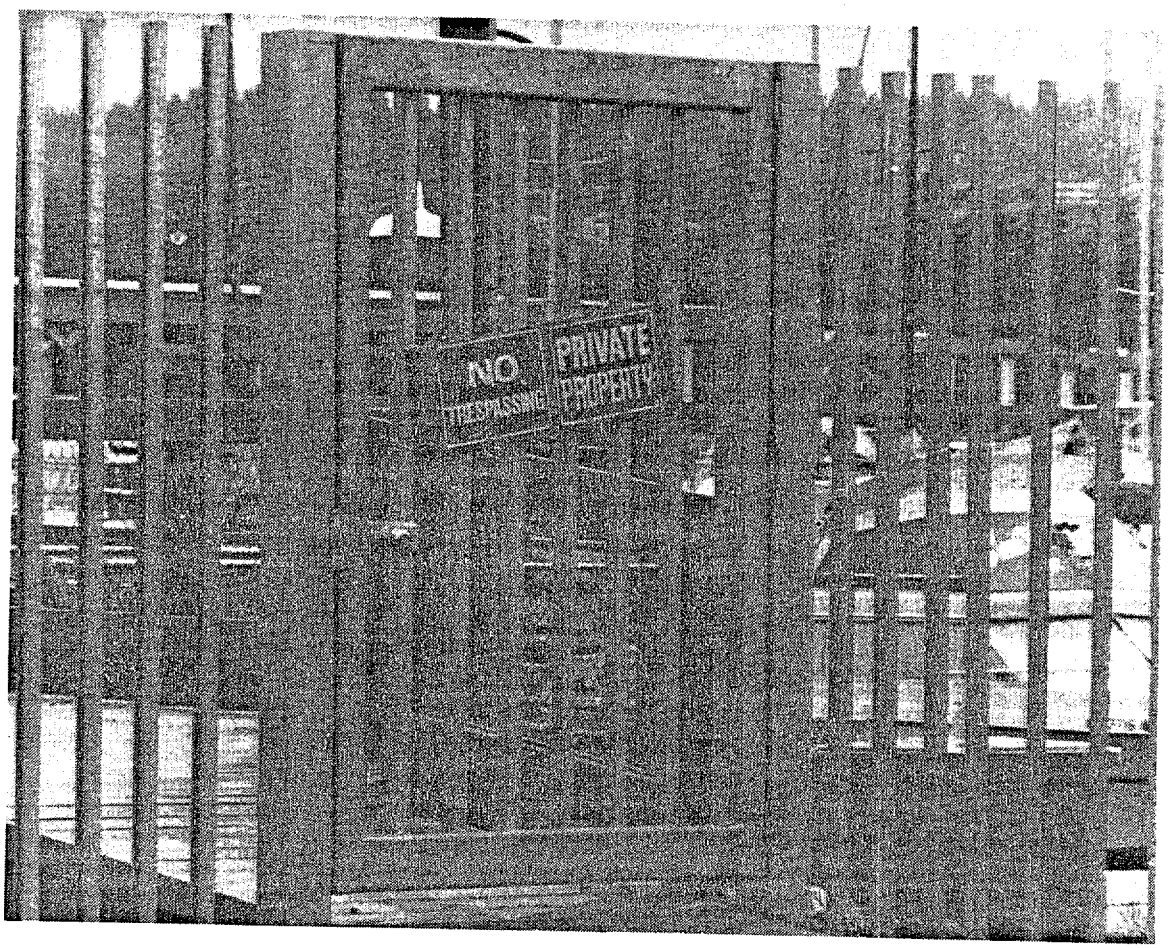

Figure 24. *No entry. In too many locations fences and signs such as these stand in the way of public access.*

CONCLUSIONS AND RECOMMENDATIONS

This evaluation of the provision of public access under the Shoreline Management Act of 1971 has uncovered several program deficiencies which need to be addressed. These areas are summarized below and recommendations are made as to the appropriate means of dealing with each.

Conclusion

The provision of public access is often used by developers as a lever to get projects approved that might not otherwise receive favorable consideration. This may result in water-dependent uses being displaced by nonwater-dependent uses which provide ancillary public access. Waterfront restaurants are sometimes cited as the offender in these cases. However, waterfront restaurants are people-oriented places providing much demanded waterfront activity and access. Also, true water-dependent uses may be incompatible with public use and on site access.

Recommendation

The mere provision of public access should not be enough to allow a nonwater-dependent use on a shoreline that would otherwise not be permitted. A combination of public access with a public use commercial facility, such as a restaurant, should receive priority over a nonwater-dependent but private use enterprise. This is an issue that is appropriately dealt with by local planning. Local plans should be explicit about waterfront areas which demonstrably have no future potential for water-dependent uses and where water related uses would allow substantial public enjoyment.

Conclusion

Important access for the public has been created by shoreline permit provisions but there is no comprehensive statewide record of where the access exists and how much shoreline has been made available this way.

Recommendation

At a minimum, the Department of Ecology's computerized file of shoreline permits should record the existence of access provisions along with other permit data. More desirable would be for the Department of Ecology to conduct an inventory of accessible shorelines. This inventory could be accomplished by searching for and compiling existing shoreline permit access provisions and by establishing a system to update the inventory as new permits are issued.

Conclusion

Some accesses established by permit provision have become obscure over the years because signs have been removed and the permit has been filed away or shredded. Unless the access is heavily used by the public, the fact of its existence tends to be "forgotten" -- a condition made inevitable when there is no permanent legal record of the access.

Recommendation

1. *A means of monitoring and long-term enforcement of shoreline permit access provisions needs to be created.*

2. *In addition, access provisions should be legally established by easement recorded with the deed or on the face of the plat.*

3. *The Department of Ecology should produce a standarized access sign and make its use a requirement for all public accesses, including publicly owned areas. The sign could be made available at cost, or at some nominal price, to encourage its usage.*

Conclusion

Once an occupancy permit is issued, it is difficult to enforce permit provisions even though a local jurisdiction has the authority to levy fines for noncompliance.

Recommendation

The access should be developed and legally recorded as prerequisite to issuance of occupancy permits.

Conclusion

Many accesses are inadequately signed as available to the general public.

Recommendation

Minimum signing criteria and guidelines should be prepared for public accesses by the Department of Ecology.

Conclusion

Some accesses are of marginal utility as public use features because of inadequate space allowance, no separation of private and public space, and because of design weaknesses.

Recommendation

The Department of Ecology should publish a manual on public access which would cover design and space criteria.

Conclusion

Some local jurisdictions do not seem to be able to get accesses "on the ground" even though their master program contains policy statements about access. At the same time other jurisdictions have successful access programs without any stronger statements of policy. The difference seems to be in the planning department's "personality" and degree of assertiveness in pursuing access. In some cases the local planners do not have the knowledge or "tools" they need to be innovative about access.

Recommendation

The Department of Ecology should sponsor a public access workshop which would be a training session on how to get and keep public access. In this way, those local jurisdictions which have not done much with access could find out how it is done, and the more experienced jurisdictions could learn new and different ways of obtaining access. Additional follow-up, via Department of Ecology technical assistance to local jurisdictions, would also help foster public access.

Conclusion

There is a widespread inability to monitor and enforce the provision of public access. Most local jurisdictions do not have the staff and money to patrol accesses to look for destroyed signs, closures of access gates, and other similar actions. The problem is compounded by a lack of public knowledge about where public accesses are. The lack of public knowledge means the local jurisdiction will probably not hear about problems with accesses.

Recommendation

1. *The state should create a program of monitoring and enforcement of access permit provisions. It could either be a direct state program or a state funded grant-in-aid program to local jurisdictions.*

2. *The state also should publish a guide and advertise accesses to make the public more aware of what is available.*

Conclusion

The provision of public access is usually not successful unless guided by an areawide plan for access. This is most apparent when studying the case examples of those jurisdictions which have prepared access plans. These plans are most effective when limited to specific shoreline segments rather than jurisdiction-wide (such as for an entire county).

Recommendation

Each local jurisdiction should be encouraged to develop plans for public access to shoreline areas where public access is an objective. These plans should be done for homogeneous shoreline segments. This will fit the plan to the shoreline character such as a central waterfront or commercial area rather than attempting to force an unyielding level of detail on all shorelines within a jurisdiction.

Conclusion

The inability to operate and maintain public access sometimes blocks its initial development. This especially true for those facilities that should logically be taken over by a local parks department for operation and maintenance (O&M).

Recommendation

The state of Washington should create an O&M funding program for public use facilities that would include public access. In the absence of such a program the continued O&M of accesses by project developers is an important feature.

Conclusion

Many members of the public are largely unaware of opportunities for access because there is a lack of maps, guides, or brochures showing access sites.

Recommendation

The Department of Ecology should publish a shoreline access guide for Washington state and advertise the existence of shoreline access. Utilization of local media as a means of advertising should not be overlooked.

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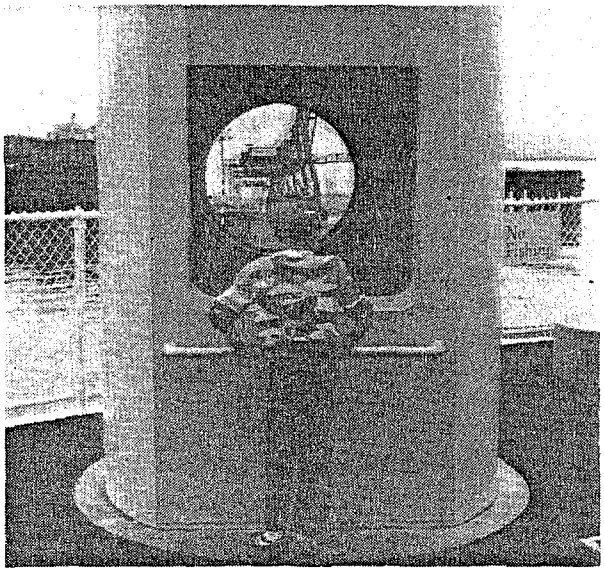
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