WASHINGTON COMPETITIVENESS COUNCIL
SUPPLEMENT TO FINAL REPORT

Supplement A

Information regarding the
British Columbia Minister of Finance

British Columbia Deregulation Minister

The new Government of BC has made deregulation a priority. They have appointed a Minister of Deregulation to implement a deregulation program. The objective of the program is to cut the regulatory burden by one third within three years. The main elements of the program include:

- Distinguish between regulations and regulatory requirements
- Develop a broad definition of regulation, including a definition of red tape.
- Each ministry must count the number of regulatory requirements they administer and submit within 45 days.
- Will use as a benchmark for cutting.
- Adopt new criteria to apply for new regulations.
- All new regs will be reviewed for compliance with new policy.
- Considering a moratorium on all new regs that impose significant cost and compliance burden.
- New criteria will include the need to incorporate market incentives
- Must do a cost benefit analysis
- Must avoid duplication
- Must get rid of two regs for each new one.
- Must prove a reg is needed, rather than looking for proof that it is not.
- All regs must include sunset provision
- Must use transparent, plain language
- Must go through an analysis to assess their impact on competitiveness
- All current regs to be reviewed
- Priority for review on regs and programs with an impact on competitiveness-identifying with help of private sector and ministries
- Red-tape reduction task force
- Ministries prepare plans to cut regs by 1/3 over 3 years.

Supplement B

California's Permit Consolidation Zone Pilot Program
Statutory Provisions and Guidebook

CALIFORNIA PUBLIC RESOURCES CODE - SECTION 71035-71035.11

71035. As used in this chapter:

(a) "Certified unified program agency" means a certified unified program agency as designated under Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code.

(b) "Environmental agency" means an environmental agency as defined in subdivisions (a) to (g), inclusive, of Section 71011.

(c) "Environmental permit" means any environmental permit issued by an environmental agency or a certified unified program agency.

(d) "Facility compliance plan" means a plan that does all of the following:

(1) Contains information and data for all emissions and discharges from the facility and the management of solid waste and hazardous waste, including all information revelant to individual environmental permits that would otherwise be required for the facility.

(2) Specifies measures, including, but not limited to, monitoring, reporting, emissions limits, materials handling, and throughputs, to be taken by the project applicant to ensure compliance with all environmental permits that would otherwise be required.

(3) Meets the requirements of all individual environmental permits that would otherwise be required.

(4) Ensures compliance with all applicable environmental rules, regulations, laws, and ordinances.

71035.1. On or before January 1, 1997, the secretary shall adopt regulations establishing the permit consolidation zone pilot program consisting of all of the following:

(a) An application process whereby cities and counties may request that all or part of their jurisdiction be designated a permit consolidation zone.

(b) An administrative process which may be used for new or expanded facilities within a designated permit consolidation zone, at the option of the permit applicant, to substitute a facility compliance plan for any environmental permit. The application process shall contain a means to determine that new or expanded facilities are in compliance with all applicable laws and requirements.

(c) A process to coordinate inspection and enforcement activities among the agencies that would otherwise have issued individual permits for facilities choosing to be permitted through a facility compliance plan.

(d) Procedures pursuant to which applicant cities and counties may amend or terminate the designation.

71035.2. The regulations required by Section 71035.1 shall be developed by the secretary in coordination with the Secretary for Trade and Commerce, the Secretary of the Resources Agency, and the Secretary for Business, Transportation and Housing, and in consultation with representatives of cities, counties, local environmental agencies, and certified unified program agencies.

71035.3. The application process required by subdivision (a) of Section 71035.1 shall provide for all of the following:

(a) A competitive application process which designates not more than 20 cities and counties with a population greater than 5,000 as determined in the 1990 census, or parts thereof, as a permit consolidation zone.

(b) The award of designations by a review panel composed of the secretary and the Secretary for Trade and Commerce.

(c) The award of designations based on the applications submitted.

In awarding designations, the review panel shall consider the extent to which the applicant has instituted permit streamlining measures for permits under its authority, whether there is a single certified unified program agency within the boundaries of the area proposed in the application, whether provisions are included to ensure adequate public participation in the final permit decisions on facilities subject to a facility compliance plan, and the extent of existing or proposed agreements between the applicant and other local, state, and regional permitting agencies with jurisdiction within the boundaries of the area proposed in the application.

(d) A requirement that all cities, counties, and local environmental agencies with permit authority over the projects subject to a facility compliance plan within the proposed permit consolidation zone agrees to the designation.

(e) In awarding designations, ensure a diverse range of permit consolidation zones, including, but not limited to, urban and rural counties, large and small cities, and communities encompassing military base or reservations reuse.

71035.4. (a) (1) A designated city or county may terminate its involvement in the pilot program established pursuant to this chapter following 180 days' written notice to the secretary. The permit consolidation zone shall be deemed terminated at the end of the 180-day notice period.

(2) Notwithstanding any other provision of law, any facility within the terminated permit consolidation zone permitted through a facility compliance plan pursuant to Section 71035.5 shall be deemed to hold valid environmental permits until individual environmental permits are issued or denied for the facility by the applicable environmental agencies.

(b) An application for amendment to a permit consolidation zone designation shall be submitted by the applicable city or county to the review panel under Section 71035.3. Any amendment shall become effective within 90 days after the date of receipt by the review panel.

(c) The procedure for replacing a facility compliance plan in whole or in part with individual environmental permits, as a result of an amendment or termination of a permit consolidation zone designation, shall be specified in the applications submitted pursuant to Section 71035.3.

71035.5. The facility compliance plan substituted pursuant to subdivision (b) of Section 71035.1 shall provide for all of the following:

(a) Substitution of the plan for all individual state agency and local environmental permits that would otherwise be required for the proposed project, unless otherwise specified in the designation application submitted by the applicant city or county.

(b) Measures to be taken by the project applicant to ensure compliance with all applicable rules, regulations, ordinances, and statutes and to ensure that the facility compliance plan is as enforceable as individual permits.

(c) The equivalent opportunity for public notice, hearing, comment, participation, administrative appeal, and judicial review as provided in the environmental permit process that would otherwise be applicable.

(d) All applicable individual environmental permits for the project to be deemed to have been issued upon receipt of a complete and adequate facility compliance plan by the secretary.

(e) A filing fee to reflect the reasonable costs of all agencies that would otherwise issue individual permits for the project covered by the facility compliance plan, and that also reflects the reduced costs of the applicable agencies through reduced staff review of individual permits. Any fee shall be subject to Section 57001 of the Health and Safety Code. The project applicant shall not be liable for any application fees for any individual permit

that is otherwise addressed in the facility compliance plan. Local agencies shall identify and quantify any local fees in the application submitted pursuant to Section 71035.3.

71035.6. (a) Environmental agencies with jurisdiction over portions of the compliance plan shall determine if a compliance plan is complete and adequate, in accordance with this section, as it relates to their particular area of jurisdiction.

(b) A determination of completeness and adequacy shall be based solely upon whether there is compliance with the rules, regulations, ordinances, and statutes governing the environmental agency. As part of the determination of adequacy, an environmental agency may require additional conditions necessary, in its judgment, to make the facility compliance plan consistent with its rules, regulations, ordinances, and statutes.

(c) If an environmental agency possessed discretionary authority over a facility prior to the enactment of this chapter, then the determination of completeness and adequacy shall be a discretionary action for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)). If, subsequent to the enactment of this chapter, an environmental agency, by regulation, eliminates its discretionary authority over a facility, then the determination of completeness and adequacy shall not be a discretionary action for purposes of the California Environmental Quality Act.

(d) An environmental agency shall transmit its determination to the secretary within 45 days from the date of receipt of the facility compliance plan.

(e) (1) If an environmental agency determines that a facility compliance plan is not complete and adequate, the agency shall, within the 45-day period specified in subdivision (d), transmit that determination, in writing, to the project applicant. The agency's determination shall specify those parts of the plan that are incomplete or inadequate and shall indicate the manner in which they can be made complete and adequate, including a list and thorough description of the specific information needed to make the plan complete and adequate. The project applicant shall submit materials to the environmental agency in response to the list and description.

(2) Not later than 30 calendar days after receipt of the submitted materials, the environmental agency shall determine in writing whether they are complete and adequate and shall immediately transmit that determination to the applicant. If the written determination is not made within the 30-day period, the application together with the submitted materials shall be deemed complete and adequate for purposes of this chapter.

(3) If the plan together with the submitted materials are determined not to be complete and adequate pursuant to paragraph (2), the environmental agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. Notwithstanding a decision pursuant to paragraph (2) that the application and submitted materials are not complete and adequate, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete and adequate for the purposes of this chapter.

(4) Nothing in this section precludes an applicant and an environmental agency from mutually agreeing to an extension of any time limit provided by this section.

(f) All applicable individual environmental permits for the project shall be deemed to have been issued upon receipt of a complete and adequate facility compliance plan, as determined by the secretary, after receiving the determinations of completeness and adequacy from environmental agencies pursuant to subdivision (a). In determining completeness and adequacy,

the secretary shall not substitute his or her judgment for that of the applicable environmental agencies.

71035.7. The secretary shall provide regulatory assistance with regard to projects permitted through a facility compliance plan.

71035.8. Facility compliance plans may not be applied to projects involving any of the following:

(a) The incineration of wastes.

(b) The storage, treatment, transportation, or disposal of radioactive materials.

(c) Other activities that the secretary determines, based on risks to the environment and the public health and safety, to be appropriately regulated through individual permits.

(d) Other activities within a specific permit consolidation zone as requested by the city or county in its application submitted pursuant to Section 71035.3.

71035.9. This chapter shall be implemented by the secretary only to the extent consistent with federal law and any delegation agreements with federal agencies.

71035.10. The secretary and the Secretary for Trade and Commerce shall prepare and submit an annual report to the Governor and the Legislature by January 31 of each year, containing the following:

(a) A description and location of facilities permitted through a facility compliance plan, including the number of individual environmental permits that otherwise would have been required, an estimate of cost savings to the participating facilities and the involved environmental agencies as a result of the pilot program, and the degree to which compliance with the applicable environmental laws and regulations has been maintained or increased through the pilot program.

(b) As appropriate, recommendations for modification, expansion, or elimination of the pilot program established by this chapter.

(c) Recommendations for how the pilot program could be expanded to complex facilities including, but not limited to, whether the 45-day review of facility plan completeness and adequacy should be expanded.

71035.11. This chapter shall remain in effect until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends that date.

California Permit Consolidation Zone Pilot Program Guidance Document

Chapter 1--Introduction

The Permit Consolidation Zone (PCZ) Pilot Program was established to provide a process for coordinating individual environmental permit approvals and for developing a single facility permit for businesses subject to multi-media environmental requirements. This single comprehensive, multi-media facility permit is called the Facility Compliance Plan, or FCP.

1.1 Background

The development of new industrial facilities or the expansion of existing facilities typically requires environmental permits from several agencies. Each agency has its own requirements, which vary considerably in terms of design specifications, permit terms, monitoring, record keeping and reporting, financial requirements, and so on.

California is continuously seeking ways to improve its permitting process. One of the approaches being tested is to consolidate environmental permit requirements and reduce the number of regulatory agencies approving permits. A number of environmental regulatory reform measures that have been enacted promote this type of cost-effective environmental regulation. Senate Bill (SB) 1185 (Bergeson, Chapter 419, Statutes of 1993) provided a means of coordinating permit approvals, but was only a first step in developing a true facility permit where all regulatory requirements would be specified and balanced in a more coherent document. SB 1082 (Calderon, Chapter 418, Statutes of 1993) established the Unified Hazardous Waste and Hazardous Material Management Regulatory Program ("Unified Program") to reduce cost and improve the efficiency of environmental regulation. Under this program, six previously separate programs related to the management of hazardous wastes and materials were consolidated under the responsibility of one local agency, called the Certified Unified Program Agency (CUPA).

SB 1299 (Peace, Chapter 872, Statutes of 1995), an environmental regulatory reform measure, establishes the PCZ Pilot Program. This Program applies to new or expanded/modified facilities located within specific areas of the State (Zones). Each Zone has an Administrator appointed to coordinate permits within the Zone. The Zone Administrator (ZA) is responsible for implementing the program at the local level. SB 1299 goes beyond SB 1185 and SB 1082, in that it encompasses a broader range of permitting programs and allows for the submittal of a single FCP in lieu of individual environmental permit applications. This FCP represents a new multi-media, performance-based approach to permitting.

1.2 Purpose of the Guidance Document

The purpose of this guidance document is to provide guidance on the development and processing of the FCP. The intended user of this document is the Plan Applicant, who is the facility owner and/or operator responsible for the preparation of the FCP. The Zone Administrator and permitting authorities may also find this guidance document useful in implementing the PCZ Pilot Program.

1.3 Areas Covered by the Guidance Document

This guidance document addresses the following specific areas:

- Section 2.0 provides a brief description of the PCZ Pilot Program;
- Section 3.0 presents a step-by-step description of the process for submitting, reviewing, and approving a FCP. Where appropriate, the guidance document will identify the responsibilities of the various parties involved in the steps; and
- Section 4.0 provides guidance on how to write a FCP.

Chapter 2--Program Description

A brief description of the Permit Consolidation Zone (PCZ) Pilot Program is provided in this section. The PCZ Pilot Program was established in 1995 with the passage of Senate Bill (SB) 1299. This Bill created a pilot program to evaluate the benefits of consolidating several environmental permits into a single permit also known as a Facility Compliance Plan (FCP). The PCZ Pilot Program remains in effect until January 1, 2002, unless that date is extended by the Legislature. More detailed information can be found in the founding statute and regulations listed below:

Statute - Public Resources Code, Chapter 5, Part 1 of Division 34, Section 71035 *et seq.*

Regulations - Title 27, California Code of Regulations, Chapter 4, Subdivision 1, Division 1, Section 10400 *et seq.*

2.1 Overview

The two major elements of the PCZ Pilot Program are (1) the process for designation as a Permit Consolidation Zone and (2) the approval of a FCP. The use of the FCP process can only occur if the company is located within a PCZ. There are four PCZs in California at this time. They are the City of Bakersfield; Kern County; Fresno County; and South Orange County, which includes the cities of Dana Point, Irvine, Laguna Niguel, Laguna Beach, Laguna Hills, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano.

The FCP is the main part of the PCZ Pilot Program. The FCP is not intended to merely be a compilation of typical permit applications. Rather, it represents the opportunity for a streamlined, multi-media, and performance-based approach to permitting. Due to the intent of the FCP, it is anticipated that a facility requiring approval from a variety of environmental permitting authorities will derive the most benefits from this program. Although the FCP is intended to reduce duplication of permitting requirements among agencies, the FCP must meet the requirements of all individual environmental permits that would otherwise be required and ensure compliance. This includes compliance with all applicable environmental laws, rules, regulations, and ordinances specified by the permitting authorities for the activity to be authorized by the FCP.

2.2 Potential Program Benefits

The PCZ Pilot Program can potentially provide benefits for both the public and private sectors. Potential program benefits are shown in the table below.

Recipient	Potential Program Benefit
Permitting authority	• Integrates permit requirements from various environmental permitting authorities, thereby minimizing or eliminating unnecessary and duplicative requirements

	• Cost savings from reduction of permit development costs
Business	• Allows facilities to design a system to attain regulatory compliance that is most cost-effective for their operations
Local government	• Tool to help bring in needed businesses by offering a consolidated, streamlined permit process, that would provide environmental protection that is equal to, or greater than the current standard
General public	• Interested parties no longer have to examine projects in a piecemeal manner. The PCZ program provides a means to have project information in one place, the Facility Compliance Plan.

Chapter 3--Facility Compliance Plan Process

The Facility Compliance Plan (FCP) process can be divided into two primary phases: (1) the Notice of Intent (NOI) phase and (2) the FCP phase. The entire FCP process may take approximately 150 days if a public comment period is required for an individual environmental permit substituted by the FCP. The project applicant is responsible for the preparation of FCP and its associate cost. The following sections describe the major steps in each phase and the associated timeframes.

3.1 Notice of Intent Phase

The NOI phase starts with interest from a project applicant and ends with the submittal of the NOI to the Zone Administrator. The NOI phase is outlined and described in the six steps below.

Step 1 Interest from project applicant. *Observation*: Potential candidates are identified though Consolidated Permit Survey forms.

Step 2 Zone Administrator explains the Permit Consolidation Zone (PCZ) Pilot Program, the FCP process, participants' roles and responsibilities, and provides draft NOI forms for the project applicant to complete.

Step 3 Project applicant submits draft NOI to Zone Administrator

Step 4 Zone Administrator forwards the completed draft NOI forms to the permitting authorities via a pre-set distribution list. Each ZA must maintain an update list of permitting agency contacts to receive draft NOIs.

Step 5 Zone Administrator arranges and conducts a meeting or conference call with the permitting authorities to discuss:

- Roles and responsibilities for the proposed project
- Technical information needs of the draft NOI forms
- Who should come to the pre-application meeting with the project applicant
- Contact people for the permitting authorities
- Permitting authority timelines
- Need for a consultant(s)
- California Environmental Quality Act (CEQA) requirements

Step 6 Zone Administrator communicates to the project applicant:

- Need to modify draft NOI forms

- Need to hire a consultant(s)
- Statutory requirements
- Recommendation for applicability to the FCP process
- Schedule date for the pre-application meeting

Step 7 Zone Administrator sets up the pre-application meeting with the project applicant and permitting authorities. The agenda for the pre-application meeting should include:

- Presentation by project applicant (multi-media overview of project)
- Resolution of technical questions
- Discussion of requirements, timelines, and fees
- Discussion of need for consultant(s)
- Zone Administrator presentation of PCZ Pilot Program, participants, and their roles
- Establishment of contacts within all permitting authorities and with the project applicant
- Send out goals of the meeting (expectations)
- Project applicant understands process, roles, and responsibilities

The NOI phase begins with interest from a project applicant in the PCZ Pilot Program. Before starting the NOI phase, it is advisable for the project applicant to discuss the proposed project with the Zone Administrator. The Zone Administrator explains the entire FCP process to the project applicant, describes the roles and responsibilities of the various participants, and provides the project applicant with draft NOI forms to complete.

The checklist that accompanies the NOI application asks some basic questions to help the permitting authorities determine if the proposed project falls under their jurisdiction. The checklist also helps the Zone Administrator identify what regulatory agencies may need to be contacted and invited to the initial pre-application meeting with the project applicant. The questions on the checklist are intended to be general. At the pre-application meeting with the project applicant, the permitting authorities may ask more detailed questions to determine the specific type of permit that might be required.

The project applicant then prepares a draft NOI. In developing this draft, the project applicant should work closely with the Zone Administrator to ensure all requirements are being met and to resolve any issues that might arise. Project applicants are not precluded from contacting government agencies separately but should keep the Zone Administrator informed for discussion and any information that may conflict with these procedures. The Zone Administrator is the primary contact for project applicants at this stage of the process. Later, applicants may work directly with one or more permitting authorities.

Once the Zone Administrator receives the draft NOI forms from the project applicant, they are forwarded to the relevant permitting authorities for review. The Zone Administrator then contacts the permitting authorities and arranges a meeting or conference call to discuss the proposed project and information provided on the draft NOI forms. Based on the information provided, the permitting authorities reach consensus on project viability for the FCP process. If the proposed project is a good candidate, the permitting authorities discuss attendance at the pre-application meeting, appropriate contact persons, timelines, additional data needs, the need for consultant services, and CEQA requirements.

The Zone Administrator then contacts the project applicant to convey the information discussed at the meeting with the permitting authorities. Assuming the permitting authorities have come to a consensus that the proposed project is a good candidate, the Zone Administrator schedules a joint pre-application meeting with the project applicant and the permitting authorities.

When the Zone Administrator contacts the project applicant for the pre-application meeting, the applicant will be informed of any changes that are needed to the NOI forms previously submitted. The applicant should provide the Zone Administrator with a copy of the revised NOI prior to the pre-application meeting. In addition, the Zone Administrator will discuss which statutory requirements will have to be met and if the complexity of the project is such that the services of a consultant are advisable for the project applicant.

Subsequently, the Zone Administrator convenes the pre-application meeting with the project applicant and the involved permitting authorities. The pre-application meeting will be similar to what is typically conducted by the individual permitting authorities prior to submittal of a permit application. The purpose of this pre-application meeting will be to discuss the appropriateness of the proposed project for being permitted under a FCP instead of individual environmental permit. In order to be considered for inclusion in the pilot program, the proposed facility must either be new or expanding (facility modifications are also included within the definition of expansion) and, if an existing facility, be in compliance with all applicable environmental regulations.

The pre-application meeting should include discussions of compliance history, and CEQA compliance. Other discussion topics for the meeting include the permitting authorities' public commenting requirements, public notice and public hearing requirements, and how these requirements can be met and integrated for a streamlined process. The potential benefits to the project applicant will also be discussed. Considerations for examining the potential benefits or advantages for proceeding through the FCP process include:

- Will the project need more than one environmental permit?
- Are the required environmental permits discretionary or ministerial?
-

Remembering that the purpose of the PCZ Pilot Program is to evaluate the cost-effectiveness of a multi-media FCP, it would generally not be beneficial to consider projects that only require one environmental permit. Also, projects that only require ministerial permits may not be good candidates for this program.

The Zone Administrator will also ask for the compliance status of the project with the California Environmental Quality Act (CEQA). The timing for compliance with CEQA (if necessary) and the mandated time lines for a FCP will be considered. Since the PCZ program applies to new facilities and the expansion or modification of existing facilities, a general program assumption is that a discretionary land use permit will be needed for project development. It is therefore assumed that the local government-planning department will be the CEQA Lead Agency and other local/regional/state environmental permitting authorities that have discretionary approval power over the project will be Responsible Agencies. In accordance with CEQA, the Lead Agency (i.e., the planning department) must consider the CEQA document (e.g., project EIR, Negative Declaration) in making its permit decision. Since the Lead Agency's permit decision must occur before any Responsible Agency can make its permit decision, it is expected that CEQA compliance will be completed by the Lead Agency either during the early steps of the FCP process or even before the project applicant enters the FCP phase.

If there is no discretionary land use decision that triggers CEQA compliance for the proposed project and it is determined that the project needs environmental permits that are discretionary, then CEQA compliance could be accommodated during the FCP process to a limited extent. Under this scenario, the CEQA Lead Agency will be identified during the NOI 60-day period. If it is determined that a project EIR is needed, the timeframe of the FCP process probably cannot accommodate the preparation, review, and certification of an EIR. Potential options for coordinating CEQA compliance with the FCP process include: (1) postponing the start of the FCP process until the EIR is completed or near completion and (2) the project applicant and the permitting authorities agree to extend the FCP process timeframes to allow for EIR preparation and approval. If the project needs a Negative Declaration, its preparation, review, and approval may be accommodated within the timeframe of the FCP process.

If after this pre-application meeting, the project is determined to be a good candidate for inclusion in the pilot program, the project applicant becomes a "Plan Applicant." The next step for the Plan Applicant is to file a formal Notice of Intent (NOI). If complete, the draft NOI can serve as the formal NOI. The purpose of the NOI is to provide written notice of a Plan Applicant's intent to substitute a FCP for individual environmental permits and to provide a description of the activities to be conducted under the FCP. The Plan Applicant must send the formal NOI by certified mail (or by any other means that can provide documentation of the day of receipt) to the Zone Administrator and all permitting authorities who will be involved in the review of the FCP. A 60-day time clock will start when the last permitting authority receives the NOI. During the 60-day period, there will be ongoing consultation between the permitting authorities and the Plan Applicant on the requirements for the FCP.

Also, a project team will be formed consisting of representatives from the primary permitting authorities. This will provide the Plan Applicant with a point contact from the various agencies and continuity during the preparation and review of the FCP.

3.2 Facility Compliance Plan Phase

The FCP phase starts with submittal of the proposed FCP to the Zone Administrator and permitting authorities and ends with the filing of an approved FCP with the Office of the Secretary for Environmental Protection.

3.2.1 Proposed Facility Compliance Plan

The Plan Applicant is responsible for the preparation of the proposed FCP. The proposed FCP can be submitted any time after the 60-day NOI period and must be submitted concurrently to the Zone Administrator and to each of the permitting authorities that must make a determination of completeness and adequacy.

Once the proposed FCP is submitted, the Zone Administrator will coordinate the solicitation of public comments, if required. Permitting authorities requiring a public notification and comment period as part of their approval process, the regional Permit Assistance Center, and the Zone Administrator will work together to notice the availability of the proposed FCP for public review. The Zone Administrator should also consult with the permitting authorities to determine if a public hearing to receive public comment is required. If so, the public hearing could be noticed at the same time as the availability of the proposed FCP. The length of the public

comment period will not be less than the longest period required by any individual permit process that would otherwise be required. It is during this timeframe that the permitting authorities are also expected to conduct their technical review of the proposed FCP. If there is no requirement for public review and comment, then the timeframe to review the proposed FCP should be no longer than a typical public comment period of 45 days. However, if a public comment raises new issues or concerns, additional time may have to be added for the review and approval process to address these comments.

Some permitting authorities that require a public notification period as part of their approval process, do not commence the notification period until the project is shown to comply with all of the agency's applicable rules and regulations. In these instances, it is not likely that the permitting authority will be able to review the proposed FCP and conduct the public notice all within the 45-day timeframe.

All public and permitting authorities' comments should be submitted to the Zone Administrator by the close of the comment period. After the comment period, the Zone Administrator will then send the comments to the Plan Applicant and the permitting authorities. The Plan Applicant is responsible for responding to the comments. The Zone Administrator and the permitting authorities can meet with the Plan Applicant, however, to assist the Applicant in preparing appropriate responses. As mentioned earlier, public comments may raise issues and concerns that require a revision in the FCP. Major revisions will require that additional time be taken by the permitting authorities to review and approve these changes. Any extension of time will be discussed with the Plan Applicant, but the permitting authorities will have the final say in how much time is needed.

In response to public comments, the Plan Applicant must modify the proposed FCP or otherwise respond to such comments before submitting the final FCP for approval. If a permitting authority determines that additional public participation is required under the individual permit process that would otherwise be applicable, then the Zone Administrator will coordinate the solicitation of additional public comment on the amended FCP. An example of a situation where there may need to be a second public comment period is if the project description substantially changes as a result of public comments.

3.2.2 Final Facility Compliance Plan

The Plan Applicant must prepare the final FCP and submit it to the Zone Administrator and the permitting authorities. After receiving the final FCP, the permitting authorities have 45 days to determine if the final FCP is complete and adequate. Each permitting authority will be running a 45-day time clock, which starts with the receipt of the final FCP by the individual permitting authority. Therefore, the documents should be sent to the permitting authorities by certified mail. During the 45-day period, the permitting authorities will be reviewing the responses to comments. No new requests for additional information should be issued by the permitting authorities. However, they may need to request clarification of a response.

During this time, the permitting authorities will make a determination of the final FCP's completeness and adequacy. In some cases, this will need to be done through Board hearings (e.g., California Integrated Waste Management Board (CIWMB), Regional Water Quality Control Boards, etc.). With sufficient planning by participating parties, these Board hearings should be able to occur within the 45-day review period.

Each permitting authority transmits its determination of completeness to the Zone Administrator and the Plan Applicant. The Zone Administrator, in turn, transmits the consolidated determination to the Secretary of Environmental Protection (Secretary) within five days of receiving all the determinations. All applicable individual environmental permits for the project are deemed to have been issued upon the filing of a complete and adequate FCP with the Secretary.

If all the permitting authorities do not deem the FCP complete and adequate, the permitting authority must within the 45-day period specify in writing to the Plan Applicant and Zone Administrator those parts of the FCP that are deficient. To do this, the permitting authority is required to list and provide a thorough description of the information that must be provided to allow a determination of completeness and adequacy to be made.

In response to the determination of incompleteness, the Plan Applicant provides the additional information and resubmits the FCP containing the requested information to the Zone Administrator and the permitting authority(ies). The permitting authority(ies) have 30 days from the time of receipt, to determine in writing if the FCP is complete and adequate. The Zone Administrator will transmit the determination to the Secretary within five days of receiving the determination. If the FCP is not approved, the Plan Applicant may appeal a determination of incompleteness or inadequacy to the permitting authority.

The statute does not preclude a Plan Applicant and an environmental permitting authority from mutually agreeing to an extension of any time limit specified in the discussion of the FCP process.

Chapter 4--Preparing a Facility Compliance Plan

Under Senate Bill 1299, a Facility Compliance Plan (FCP) is defined as a plan that does all of the following:

1. Contains information and data for all emissions and discharges from the facility and the management of solid waste and hazardous waste, including all information relevant to individual environmental permits that would otherwise be required for the facility.
2. Specifies measures, including, but not limited to, monitoring, reporting, emission limits, materials handling, and throughputs, to be taken by the Plan Applicant to ensure compliance with all environmental permits that would otherwise be required.
3. Meets the requirements of all individual environmental permits that would otherwise be required.
4. Ensures compliance with all applicable environmental rules, regulations, laws, and ordinances.

In essence, a FCP is a compilation of all the environmental regulatory requirements that apply to a facility, along with the justifications and calculations used to develop effluent and emission limits, monitoring requirements, and other project specific-regulatory requirements. As such, it must contain all the information that would normally be included in individual environmental permits.

The FCP writer has the challenge of taking all the environmental regulatory requirements that apply to a facility and organizing them into one document. In doing so, the writer must clearly state from what statute or ordinance the requirements originated. The reason for this is that the regulatory agencies need to know who is responsible for ensuring compliance with each requirement.

When preparing a FCP, an applicant should seek guidance from the regulatory agencies. They can provide example permits and materials they use to train their permit writers. Recognize that the environmental regulations are complex and that no one person knows them all. In some cases, the services of a consulting firm with staff experienced in the permitting requirements that apply to your facility may be needed.

There is no required organization or format for FCPs. The FCP process is new and we are trying to encourage innovation. We do, however, have two suggested formats. The first is a regulatory program-specific format. This format would have the following elements described below.

1. **Contact Information** - Facility address, owner address, and billing address, etc.
2. **California Environmental Quality Act (CEQA)** – Includes the Notice of Determination, a list of the environmental documents prepared for the project, and any mitigation, monitoring, or reporting programs.
3. **Facility Description** - This facility description would contain, for an industrial facility, descriptions of the products manufactured, production processes, hazardous wastes generated, air emissions, and wastewater discharges. It would also contain much of the information that is required by more than one regulatory agency in permit applications. Such information includes chemical inventories, site maps, plumbing diagrams, operating hours, chemical inventories, number of workers, designs, and Standard Industrial Classification (SIC) codes.
4. **Program Specific Requirements** - For each regulatory program, such as hazardous waste, hazardous materials, underground tanks, pretreatment, etc., the FCP writer would provide the regulatory requirements for the program that apply to the facility and describe how they apply. The regulations may be summarized as long as references to the actual regulations are provided. Some requirements may need supporting calculations or justifications, such as how an effluent or emission limit was developed. Regulations often require the development of plans, such as a storm water pollution prevention plans, sludge discharge control plans, closure plans, or emergency response plans. Although these may be incorporated directly into the FCP or attached as appendices, they do not have to be included in the FCP and may be separate documents developed after the FCP is approved.

The program-specific format may be the easiest way to organize a FCP, but may not provide some of the benefits of consolidation. An alternative way is to organize the report by activity as described below.

1. **Contact Information** - Facility address, owner address, and billing address, etc.
2. **California Environmental Quality Act (CEQA)** – Includes the Notice of Determination, a list of the environmental documents prepared for the project, and any mitigation, monitoring, or reporting programs.
3. **Facility Description** - This facility description would contain, for an industrial facility, descriptions of the products manufactured, production processes, hazardous wastes generated, air emissions, and wastewater discharges. It would also contain much of the

information that is required by more than one regulatory agency in permit applications. Such information includes chemical inventories, site maps, plumbing diagrams, operating hours, chemical inventories, number of workers, designs, and Standard Industrial Classification (SIC) codes.

4. **Design** – This section would contain the regulatory requirements that apply to the design of the facility. It includes the required design for storage facilities that hold hazardous materials or wastes. It also includes the design of pollution control equipment and the calculations and justifications used to derive air emission and wastewater discharge limits.
5. **Construction** – This section would contain the requirements that apply during the construction of the facility.
6. **Operation** – This section would contain the requirements that apply to the operation of the facility, including air emission and wastewater discharge limits.
7. **Monitoring, Reporting, and Record Keeping** – This section would contain the monitoring, reporting, and record keeping requirements. A single document for reporting monitoring data for all media may be proposed.
8. **Emergency Response and Notification** – This section would contain the requirements for responding to an emergency spill or an accidental release.
9. **Closure** – This section would contain the closure requirements.

Chapter 5--Amending an Approved Facility Compliance Plan

Whenever possible, a Plan Applicant should design their FCP to include and be compatible with all known future changes. This way, the approval process will already have considered these changes and the Plan Applicant will not need to seek additional approval to make these changes in the future. However, the unexpected can always happen. If changes occur in the nature of operation, in the equipment use, make a portion of the FCP void, or are not addressed by the FCP, an amended FCP may need to be prepared and reviewed by permitting authorities.

When a FCP is amended, only that portion of the FCP that is amended must be reviewed and approved. In some cases, minor changes will not require addition approval. These changes may include change of ownership, changes that do not effect the emissions or discharges of pollutants, and replacement of like equipment.

Whenever changes are made that may require the submittal of an amended FCP, the Plan Applicant must contact the Zone Administrator to determine the appropriate procedure to follow. If an amended FCP must be submitted, only those agencies that have permitting authority over the revised activity or equipment must review and approve of the amended FCP.

In addition to changes made by a company, regulations and requirements can sometimes change. If new regulations are adopted which require the FCP to be modified, the company will have to submit an amended FCP.

Companies must follow the same procedures used to approve a new FCP when seeking an amendment to an approved FCP.

Supplement C

Consolidated Land Use Code
Chapters 4 and 5 of the 1998 Land Use Study Commission

Chapter 4
Benefits of a Consolidated Land Use Code

The Commission was established by the Legislature in 1995 to develop a consolidated land use code, described by the Legislature as the integration and consolidation of the Washington's land use and environmental laws into a "single manageable statute." The reasons for developing a consolidated land use code are numerous.

Governor Locke succinctly stated the benefits of a consolidated land use code in his Executive Order extending the Land Use Study Commission.[4] He identified five benefits:

- Protecting and enhancing important environmental values;
- Improving the planning and permitting processes without sacrificing environmental protection;
- Improving cooperation among all levels of federal, state, and local government;
- Increasing public involvement in the land use system; and
- Assisting in the response to listings under the ESA.

Protecting and Enhancing Environmental Protection

Over the last thirty years, the Legislature has adopted many new laws designed to protect or address specific environmental concerns. These laws have generally been added to the existing array of statutes, rather than replacing them. This has resulted in a complicated layer of regulatory provisions that can be difficult to unravel. The statutes have different policies and goals because they have been adopted for different purposes. They impose different requirements on governmental agencies and the public that may duplicate or conflict with requirements of other statutes. This makes implementation and enforcement difficult and can adversely affect the success of the statute in achieving its objectives.

By eliminating duplicate or conflicting provisions and clarifying the state's goals and policies, a consolidated land use code will improve the ability of local and state governments to implement and enforce laws designed to protect the environment. Resources of all parties can be devoted to issues that are of greatest value to protecting the environment.

Improving Planning and Permitting

The Growth Management Act and subsequent legislation initiated a process that has led to improvements in the land use planning in Washington. By further coordinating the decisions and processes in the planning process with the permitting process, a consolidated land use code can result in a system that provides for better understanding of the environmental impacts of planning decisions and the cumulative environmental impacts of those decisions. At a time when significant population growth is projected for the state, being prepared to address this growth and its impacts in a methodical and consolidated manner will be important. At the same time, the project review process can be made more efficient by reforming those parts of the process that result in duplication of effort. Cost savings in the permit process can also assist in meeting housing affordability goals.

Improving Intergovernmental Coordination

The land use and environmental regulatory system requires a partnership between a wide array of governmental entities. Local, state, tribal, and federal governments all have an interest in the system. State and federal laws assign authority to the different levels of government for

implementation. If governments act independently of each other, they can duplicate or counteract the efforts of others. A consolidated land use code can clarify the responsibilities of different levels of government resulting in more efficient use of public resources and a better implementation of state and federal law. More even distribution of economic development could be addressed, as could matching state resources to areas planned for growth.

Improving Public Involvement

Public participation and approval of land use and environmental decisions is essential to a well functioning system. Public participation provides a barometer of the public's views. Public participation also acts as the conscience of the community. Public approval is also important to an efficient permitting system. Public opposition to a project results in delays that add to costs and frustration on all sides. Meaningful public participation should be a fundamental principle of a consolidated land use code. One of the chief obstacles to public participation is the time and energy required for members of the public to attend hearings and meetings and to know who will be making critical decisions. A consolidated land use code that simplifies the land use decision making process and that provides clear guidelines on when decisions will be made will enhance public participation.

Responding to the Endangered Species Act

In early 1999, several salmon runs likely will be placed on the list of threatened or endangered species under the federal Endangered Species Act, adding to those that have already been listed. Significant portions of Washington, including many of its most populous areas, will be affected by the listings. The Washington State Joint Natural Resources Cabinet released its first working draft of a statewide strategy to recover salmon on September 25, 1998. The working draft addresses issues involving water resources, land use, habitat, and stormwater. There is a strong likelihood that the final strategy proposed by the Governor to the National Marine Fisheries Service will have wide ranging impacts on many of the Washington's land use and environmental laws. A consolidated land use code, through improved enforcement and better use of scarce state and local resources, can serve as an important component of a recovery strategy.

[4] Executive Order 98-01.

Chapter 5
Consolidated Land Use Code

Issue Statement

The Land Use Study Commission was directed by the Legislature to develop a consolidated land use code. Enactment of a consolidated land use code will result in significant changes to the way participants in the land use system interact with each other and with the regulatory system. The possibility of changes has raised concerns that they will diminish some important components of the current land use and environmental regulatory system, create more rather less confusion, and provide no significant procedural improvements. In addition, enactment of a consolidated land use code in a single step, rather than over time, will have significant impacts on local and state governments at a time when they are grappling with other important issues.

Background

The 1995 Legislature made the following statement as the first section of ESHB 1724, the Legislation creating the Commission:

> The legislature recognizes by this act that the growth management act is a fundamental building block of regulatory reform. The state and local governments have invested considerable resources in an act that should serve as the integrating framework for all other land-use related laws. The growth management act provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development.

L. 1995, Ch. 347, ? 1.

The Commission's enabling statute gives the following direction to the Commission:

> The commission's goal shall be the integration and consolidation of the state's land use and environmental laws into a single, manageable statute. In fulfilling its responsibilities, the commission shall evaluate the effectiveness of the growth management act, the state environmental policy act, the shoreline management act, and other state land use, planning, environmental, and permitting statutes in achieving their stated goals.

RCW 90.61.010 (repealed effective June 30, 1998).[5]

Discussion

Structure of the Code.

The Commission identified over a dozen existing chapters of the Revised Code of Washington that might be included in a consolidated land use code. In its review of these laws, the Commission identified the different chapters that could hold the various provisions of those laws. These categories would translate into chapters of the consolidated land use code.

A consolidated land use code could have the following chapters:

- **Policies:** The major policies that guide state land-use and environmental laws, including policies concerning growth management, shorelines management, and environmental protection.
- **Definitions:** A consolidated definitions chapter.
- **State and Local Responsibilities:** The state's roles and responsibilities with respect to environmental and land use laws and the framework for local government authority within the context of the state's policies.
- **Coordinated State Planning:** Coordination of state agency activities related to environmental and land use policies.
- **Local and Regional Planning:** A comprehensive planning statute integrating the planning enabling statutes with the GMA. It could also include regional transportation planning laws.
- **Environmental Analysis:** Coordinating the state environmental policy act into the framework of the consolidated land use code.
- **Development Regulations:** The use and application of development regulations as they provide controlling policy for local land-use and environmental regulations.
- **Subdivision of Land:** The process for subdividing land.
- **Project Review and Permitting:** The guidelines for conducting state and local project review, consolidated permit processes, and public involvement in those processes.

- **Funding:** Funding for infrastructure, impact fees, and incentives to coordinate actions among different governments.
- **Enforcement:** The consequences of non-compliance.
- **Appeals and Judicial Review:** Administrative and judicial review of state and local government land use planning and project decisions.
- **Miscellaneous:** This chapter includes severability sections, effective dates, and other existing statutory provisions that do not fit in another category.

These chapters are discussed later in the report under the following subject headings:

- **Governance:** Policies; State and Local Responsibilities
- **Planning:** Coordinated State Planning; Local and Regional Planning
- **Environmental Review and Permitting:** Environmental Analysis; Development Regulations; Subdivision of Land; Project Review and Permitting
- **Appeals and Judicial Review**
- **Enforcement**
- **Funding**
-

Principles

As a result of the hearings it held over the last three years, the Commission concluded that a consolidated land use code would be an effective means of accomplishing the legislative goal of using the GMA as the integrating framework for land use and environmental law in Washington. The Commission adopted four principles to guide its development of a consolidated land use code. They are:

- Protection of environmental values must be as strong or stronger than today;
- The permit system must be more efficient for all applicants, big and small without sacrificing environmental protection;
- The total cost for complying with the code for counties and cities must be no greater than it is today; and
- The opportunity for meaningful public participation in all stages of the planning and permitting process must be retained or enhanced.

Any subsequent effort to implement a consolidated land use code may want to elaborate on these goals and how they can be improved. There were also a number of views expressed over the proper phasing and weight to be given each of the goals, as discussed below.

Protection of the Environment

A primary goal of many of the statutes included in the consolidated land use code is the protection of specific environmental resources or inclusion of environmental values in the decision making process. The consolidated land use code should not only maintain these goals, but can enhance them. This will be necessary to gain the public support to make the changes. Some expressed the view that environmental protection must be stronger than it is today, because they view current laws as not accomplishing sufficient protection. Others view the regulatory process as not giving sufficient deference to property rights.

Permit System Efficiency

The permit system is the chief means by which land use and environmental policies are implemented. An inefficient permitting system does not further those policies and can lead to frustration and efforts to undermine or weaken the policies. An efficient permitting system

should further those policies at the least cost to the participants. However, efficiency should not be used as a means to undermine environmental protection.

System Costs

The consolidated land use code should have demonstrable benefits to all parties. Local governments and the public are still catching up with the changes enacted over the last several years. Many costs were created by vague GMA requirements. Future changes to state laws must provide more clarity and certainty to existing processes. Some believe a consolidated land use code will require increased costs, in order to protect the environment, and that a goal of no cost increase is not realistic. Local governments are firm in their claim that there should be no unfunded mandates. Small builders point to new or higher permit fees as an obstacle to affordable housing. In sum, adequate funding is an essential element of a consolidated land use code.

Public Participation

A consolidated land use code must result in at least the same level of public participation as today. Its objective should be to enhance and make public participation opportunities more meaningful.

Statutes Included in Consolidated Land Use Code

The Consolidated Land Use Code proposed by the Commission would create a new title in the Revised Code of Washington and move existing provisions of several statutes into that title. The major statutes that would be moved include:

- State Environmental Policy Act (RCW 43.21C)
- Growth Management Act (RCW 36.70A)
- Shoreline Management Act (RCW 90.58)
- Environmental Hearings Office (RCW 43.21B)
- Planning Enabling Statutes (RCW 35.63, 35A.63, and 36.70)
- Regional Transportation Planning Act (RCW 47.80)
- Subdivision and Platting Statute (RCW 58.17)
- Impact Fees (RCW 82.02)
- Project Review (RCW 36.70B)
- Land Use Petition Act (RCW 36.70C)

Other statutes may also be appropriate for inclusion in the consolidated land use code. For example, school districts and port districts play an important role in land use decisions, but are not governed by the GMA. Over time, additional statutes may also be consolidated into the code. For example, a number of other special purpose districts operate under separate planning statutes, which can lead to fragmented land use planning. See, e.g., RCW 57.16.010 requiring water-sewer districts to adopt a comprehensive plan before undertaking certain kinds of actions. Hydraulic project approvals and certain forest practices (Class IV conversions) are also candidates for inclusion in the consolidated land use code.

The GMA should serve as the integrating framework for land use and environmental decisions. Integrating environmental protection into the land use planning and decision making process is controversial. Many of the GMA decisions local governments have made are based on certain assumptions; such as that current SEPA with its EIS process is available to address specific impacts of individual projects. The transition to a system where some significant land use decisions are made during development and adoption of comprehensive plans and development

regulations will require adjustments on the part of local governments and the public. In some cases it may require local governments to revisit planning decisions made and development regulations adopted in the past to assure that environmental impacts have been adequately analyzed and addressed. In other cases, it may result in limitations on the issues neighbors may be able to raise during project review.

Some environmental groups believe that SEPA and the SMA should remain as independent statutes. The tribes also strongly believe in the need to retain these as separate laws. They also point out that other laws, such as those governing forest practices, flood control, and shellfish protection are important for environmental protection and are not necessarily governed by the GMA.

Process is the tool most of these statutes use for protecting the environment. A consolidated land use code offers the opportunity to replace process with substance, but this is an opportunity that will require considerable effort to be achieved.

Options

The Governor and the Legislature must evaluate what direction Washington's land use and environmental laws should take. There are three basic choices: the status quo, staged consolidation, or consolidation in a single step. Each is discussed below.

Status Quo

This option would not make any systematic changes to the land use and environmental laws. Changes necessary to address specific problems or issues would be handled individually rather than as part of a consolidated land use code.

Pros:

- There are many who believe that the need for a consolidated land use code has not been demonstrated. If there are problems or issues with specific statutes, they suggest these should be addressed individually. They believe wholesale changes to existing law, even if done over time, will cause more problems than it will solve.
- The current land use and environmental system has evolved over time and includes not only statutes but judicial interpretations. Members of the environmental community express concern that the changes contemplated by a consolidated land use code would disrupt these years of practice and experience and cause more litigation and uncertainty.

Cons:

- There are some who believe that the current land use and environmental system does not function well. They see it as too costly. They note that part of the problem is due to the piecemeal changes that have been enacted over the years. They believe there is a need to review the system as a whole and make the changes necessary to more effectively achieve the goals of the different environmental and land use laws.
- Some in the development community believe that the current system has created an atmosphere of mitigation through litigation. They believe that process becomes a substitute for environmental standards.
-

Staged Consolidation

Another option is to take a first step towards implementation of a consolidated land use code - existing land use and environmental laws could be recodified within a new title of the Revised

Code of Washington. Future efforts would focus on more fully integrating these different statutes with one another and addressing the substantive changes discussed elsewhere in this report.

Pros:

- Proponents of this option suggest that placing related environmental and land use statutes into proximity with each other will make it easier to understand the relationships between the different statutory provisions.
- Proponents also argue that this approach will allow time for parties to adjust to the changes and assure that implementation goes smoothly. If sufficient time is allowed between adoption of the different stages and their effective date, problems can be identified and corrected before the changes go into effect.

Cons:

- Local governments express concern about the unknown impacts that recodifying existing statutes will have on local governments. They suggest that at a minimum, there will be a need to review local codes to change statutory references. This will take time and cost money that could be better spent on other tasks.
- Some in the business community see this option as amounting to no more than a cosmetic change that does not get at the real value of integrating the different land use and environmental statutes.
- Members of the environmental community are concerned about unintended case law consequences that might result.

Consolidation in a Single Step

Under this option, the entire consolidated land use code would be developed and adopted as a whole.

Pros:

- Proponents of this option note that it would give more time to the development of ideas presented in this report.
- Proponents also suggest that this option will be more likely to ensure that consolidation results in a consistent code that integrates the different statutes.

Cons:

- Some in the local government and environmental communities believe that the changes to existing procedures and systems that would be brought about by a consolidated land use code implemented at one time could be too disruptive. They fear that at a time when local and state governments have limited resources, they will be forced to address procedural issues that may not provide any clear environmental benefit.
- Some in the environmental community are concerned that in integrating different statutes into a consolidated land use code, important state policies will lose out to the desire to achieve efficiency.
-

Recommendation

The idea of a consolidated land use code has the potential for many positive benefits. At this time, however, there is not the consensus necessary for its final development and adoption. The reasons for that lack of consensus are discussed in more detail in this report. The ideas presented in this final report merit further consideration and exploration. A consolidated land use code will take time to develop and implement. It will also require that adequate funding be an integral part of implementation.

Supplement D

Unified Hearings Board
Chapter 11 of the 1998 Land Use Study Commission

Chapter 11
Appeals and Judicial Review
Issue Statement
The purposes served by allowing an appeal of a local land use or environmental decision are viewed differently by different interests. This has led to different views of the appropriate appellate procedure and the standards that should apply during administrative and judicial review. The basic issue to be resolved on appeal is whether the decision maker has followed the law. For some, this is largely a procedural question that does not involve an examination of the substance of the decision. For others, the question of whether the law was followed also requires an examination of whether the decision is consistent with state policy, as established by the Legislature and agency rules.

Washington's land use and environmental system provides a variety of appeal procedures and review bodies. The procedure that applies to the appeal of land use and environmental decisions depends on the subject matter of the decision as well as the decision maker. In some instances, a decision can result in parallel appeals being heard by two different appellate bodies.

Background
Decisions implementing state land use and environmental laws are subject to a variety of review mechanisms. Most local government land use decisions are appealable to superior court under the Land Use Petition Act. This legislation was adopted in 1995 and combined the different appeal procedures applicable to permits into a single statute and eliminated common law procedures as the chief review mechanism.[14] State agency actions are generally subject to judicial review by superior court under the Administrative Procedures Act, RCW Chapter 34.05. Under some circumstances, prior to judicial review, a quasi-judicial state board may have review authority over the actions of a state agency or a local government. There are five separate quasi-judicial boards with authority to review land use and environmental decisions of state agencies and local governments.[15] Decisions of the quasi-judicial appeals boards may be appealed to superior court, or in appropriate circumstances, to the Court of Appeals.

In some appeals of a local government decision on a project permit application, there is the potential that two different appeal bodies will have jurisdiction over different aspects of the project. The appeal of a project constructed within the shorelines that requires a shoreline substantial development could potentially be appealed to both the Shoreline Hearings Board and superior court. As a result, the parties may be required to present similar testimony and evidence in both forums. The SHB decision, once made, may also be appealed to superior court.

There are also differences in the appeal procedures depending on the forum. Superior court review is usually based on the record created by the local government or state agency. Under the SMA, the appeal of a shoreline substantial permit is heard *de novo* by the SHB. This means the SHB conducts fact-finding hearings and bases its decision on the record it creates rather than the record before the local government.

The standard of review on appeal varies depending on the nature of the issue. The APA provides that a state agency decision will be upheld unless the agency acted in an arbitrary or capricious manner. Most local government land use decisions are appealed pursuant to the Land Use Petition Act (LUPA) which provides for a substantial evidence standard. Under the GMA, a local government's decisions relating to its comprehensive plan and development regulations are presumed valid upon adoption and must be upheld unless the GMHB determines the local government's actions were clearly erroneous.

Another difference among the different boards is the types of actions over which they have jurisdiction. The Growth Management Hearings Boards only have jurisdiction to review legislative decisions of local governments. They cannot review individual project permit decisions. The Shoreline Hearings Board has authority over both legislative actions and permit decisions. In addition to shoreline permits, it hears appeals of shoreline master programs for non-GMA jurisdictions and of Ecology's rules implementing the SMA.

The Pollution Control Hearings Board's jurisdiction is largely limited to review of Ecology actions in adopting rules, issuing permits, or imposing penalties or other sanctions. It does have authority to hear appeals of penalties imposed by the regional air pollution control authorities.

Most of the quasi-judicial boards are required to have members who are representative of the different political parties and who have expertise in the subject matter. Board members are not generally required to be attorneys, although most boards are required to have at least one attorney member.

The boards generally do not have authority to review constitutional issues.

In 1997, the Legislature changed some of the procedural standards that apply to Growth Management Hearing Board review of city and county GMA decisions. The changes were intended in part to give local government decisions greater weight on an appeal before the GMHBs.

Discussion

The role of quasi-judicial boards in Washington's land use and environmental system has received considerable attention in the last few years. Quasi-judicial boards are created for a variety of reasons. Their proceedings are often less formal and more accessible to those not represented by attorneys. The boards can provide level of land use or environmental expertise that some believe is more difficult to achieve in the judicial system. A quasi-judicial system also can provide some degree of state-wide consistency. An another advantage that proponents of quasi-judicial review see is that it brings the perspective of non-lawyers into the review process.

A common objection to the quasi-judicial boards is that they place appointed state officials in the position of reviewing, and in some cases overturning, decisions of locally elected officials. Under the GMA process, this is thought to undermine one of the principle elements of the GMA, which is the local control it gives to counties and cities. There are also objections raised that the quasi-judicial boards substitute their judgment for that of the local legislative body, rather than limit their review to legal issues. An appeal to court is felt to be preferable because the judges are directly accountable to the public through the election process. Courts are thought to be more experienced in applying the law and more familiar with separation of powers issues. There is also a concern that the quasi-judicial process is often an extra step in the review process that only adds time and cost.

The review procedure for shoreline substantial development permits presents an additional issue. Shoreline permits are heard *de novo* by the SHB. Local governments and developers frequently believe that this procedure causes unnecessary delay and allows opponents to withhold information and objections until the SHB hearing, rather than presenting all of the information at the local government hearing. They also point out that the process can result in two different review proceedings on the same project, one before the SHB and the other in superior court, with many of the same issues and evidence before both bodies. The SHB decision is then also appealable to superior court. Reform advocates question the SHB's cost effectiveness given the small number of local government permit decisions overturned by the board.

Proponents of the current SHB process believe that the shorelines are a fragile and unique resource that require special attention and protection. They point out that many local

government's have hearing procedures that do not meet the test of basic due process and fairness. The environmental community and state agencies point out that there is little evidence that duplication of proceedings is a serious problem. They note that only a small percentage of shoreline permits are appealed to the SHB and that only a portion of those permits end up in a hearing before the board. They also see *de novo* review as a means to assure that decisions affecting the shorelines are made based on scientific evidence and that the state-wide interest is not dismissed in favor of the more limited local interest. State agencies and the tribes also note that they have limited resources that make it difficult to keep abreast of and participate in every local permit process involving the shorelines. The tribes also note that with limited resources, they need to present their case in a forum where they believe they are more likely to receive procedural due process. The *de novo* review procedure provides a mechanism to assure that in those cases where it is necessary, additional evidence can be provided.

Options

Status Quo

Retain the current process with appeals going to one of the existing hearings boards or superior court, depending on the issue.

Pros:

- The environmental community and state agencies note that the majority of local land use decisions do not result in any appeals. They suggest that legitimate concerns about duplicate processes can be dealt with in other ways. They do not believe there is a need to change the underlying structure of the boards.
- Proponents of the status quo note that each of the existing hearings boards has expertise in its subject matter. They believe that eliminating or combining the boards will result in a loss of both historical perspective and consistency of application.
- State agencies and environmental organizations argue that the boards are important in ensuring that local concerns and desires do not override statewide interests.

Cons:

- Opponents of the status quo argue that even if the actual number of cases appealed is small, the threat of becoming mired in the appeals process may cause a project applicant to accept conditions that could not be mandated.
- Some favoring changes argue that the current process can be used by a party to either prolong a final decision as a way to try to kill a project or to wear out an opponent.
- Some local governments and rural landowners believe the current process involves state boards in reviewing decisions that should be left to local discretion. They see this as an inappropriate intrusion of the state into local processes.

Eliminate SHB *de novo* Review For Some Decisions

Minimum procedural standards would be established for local government hearings on project permits. The standards would need to include provisions for notice to the public and state agencies and tribes with an interest in the subject matter of the permit. The standards would also address the conduct of the proceedings, including the applicable rules of evidence, preparation of the record, and the use of and experience of hearing examiners. If a local government adopts hearing procedures meeting these standards, its shoreline permit decisions made pursuant to those procedures would be heard by the SHB on the record made by the local government. The SHB could take additional evidence upon a showing that the evidence was unavailable or for other reasons supporting opening of the record.

Pros:

- Some local governments argue that this option will provide a means to ensure that local governments are presented with all of the evidence to make an informed decision.
- Some believe that this change will discourage parties from "hiding in the weeds" and waiting until an appeal to present their best evidence.
- Proponents argue that this proposal provides an opportunity both to ensure protection of the state interest and to streamline the appeal process.

Cons:

- Some in the environmental community argue that this approach will create two different appeal systems and create confusion. They suggest it is better to have one appeal system for all jurisdictions.
- State agencies and the tribes point out that they do not have the resources to participate in all of the local government hearings that this proposal would require. They believe the likely result will be further degradation of the state's shorelines.
- Some in the environmental community are concerned about the SHB losing the ability to make factual findings. They believe this may reduce environmental protection.
-

Unified Hearings Board

The existing hearings boards would be combined into a single hearings board. Appeals of the board's decisions would be filed in the Court of Appeals, bypassing superior court. One variation would provide for regional hearings boards, similar to the three Growth Management Hearings Boards. Another variation would be to have one board, but with members appointed from around the state and sitting as regional panels.

Pros:

- Some in the business community believe the GMHBs will see a declining caseload in the next few years, calling into question the need for three full time boards.
- Proponents point out that a board with jurisdiction over all related land use issues would be able to resolve those issues in a single proceeding. They believe this would help in resolving inconsistencies in application of different statutes.
- Some have suggested that if the board were established with regional panels, the ability to provide for regional flexibility in the implementation of the different environmental statutes would be increased.
- Proponents argue that a unified board would provide a way to ensure that interests of other jurisdictions and the public are appropriately considered.

Cons:

- Advocates for local control are concerned that the proposal will expand state control at the expense of local authority.
- Some in the business community argue that the proposal does not eliminate any steps in the review process. They believe it only substitutes the hearings board for superior court.
-

State Land Use Court

Appeals of land use decisions would be filed with a state land use court. There are three ways in which the court could be established. The first option would be to establish the land use court as an inferior court to superior court, similar to the relationship between district court and superior court. This could be done by statute.

A second option would be to create a special division of the superior court, called the land use court. If this were done on a county by county basis, no constitutional change would be required.

For example, the juvenile courts are established by statute. However this would not provide for any state-wide consistency. If the land use court were established statewide at the superior court level, a constitutional amendment would probably be necessary.
A third option would be to either create a new division of the court of appeals or have the court of appeals establish a special panel to hear land use cases. The first alternative could be accomplished by statute, since the constitution gives the Legislature considerable flexibility in establishing the jurisdiction and structure of the Court of Appeals. The second alternative could be accomplished by statute or by court rule.

Pros:

- Proponents note that a land use court would have the authority to decide all issues, including constitutional questions. They also suggest that the members of the court would develop expertise in land use and environmental law.
- Proponents suggest that if the court were established on a regional or statewide level, matters of statewide concern would be more likely to receive appropriate consideration and there would be greater consistency of application of state laws across the state.
- Those who favor the court of appeals option note that this would eliminate one step in the appeal process.

Cons:

- Some people believe that creating a new court would add to an already complex judicial system.
- Some have suggested that, unless the court is established at the Court of Appeals level, there would not be any significant improvement in the overall process. They believe there would only be a substitution of one forum - superior court or the hearings board - for another - the new land use court.
-

Superior Court

Eliminate the hearings boards and provide that all appeals are filed with the superior court. The authority of the superior court to appoint special masters could be expanded to address the need of some courts to obtain the expertise necessary to resolve technical issues that may arise.

Pros:

- Proponents of this option note that it would provide a forum where all questions, including constitutional issues, could be resolved in a single proceeding.
- Some favor the proposal because it relies on elected judicial officers to review the decisions of other elected officials. They also believe it allows decisions to be made locally, at less cost to the parties. They note that it relies on an established process, with rules and procedures that are well understood.

Cons:

- Some people argue that the proposal will require knowledge of land use and environmental laws that few superior court judges have. They acknowledge that access to special masters may help, but do not believe this removes the underlying problem of a lack of land use and environmental law expertise on the part of some judges.
- Some in the neighborhood and environmental communities express the concern that local superior courts will reflect the interests of the local elected officials and that issues involving statewide interests may not be given appropriate consideration. They express concern that county legislative authority over the superior court's budget may create an appearance of a conflict of interest.
- Environmental and public interest groups argue that judicial proceedings will be more formal and intimidating to citizens who cannot afford legal counsel.

Court of Appeals

Under this option, appeals of land use decisions would be filed directly with the Court of Appeals.

Pros:

- Proponents of this option note that it relies on existing judicial mechanisms. They note that it does not require a new court or hearing board and that the only added cost might be the need for additional judges. They suggest some of this cost may be offset by a reduced workload in the superior courts and hearings boards.
- Some people have noted that the Courts of Appeals judges have access to law clerks and other resources helpful in reviewing and analyzing cases. These are resources not always available to the hearings boards or to superior court judges.

Cons:

- Some with concerns about this option note that a case before the Court of Appeals can take from one year to 18 months, including time for briefings, oral argument, and written decision. They point out that most superior courts and hearings boards often issue their decisions more quickly.
- Some have noted that land use appeals, particularly those involving projects, may require fact-finding hearings. They note that fact-finding is not something the Courts of Appeal are set up to easily handle.

Sunset Growth Management Hearings Boards

The GMHBs would be phased out over six years and their jurisdiction to hear appeals of amendments to comprehensive plans or development regulations would be eliminated. Appeals of amendments would be heard by superior court. The boards would have jurisdiction over adoption of a new comprehensive plan or development regulations and over pending cases. In 2000, the three boards would be consolidated into a single six-person board, which would function in two, three-member panels. In 2002, the number of members would be reduced to three. In 2004, the board would sunset and all future GMA appeals would be heard by superior court.

Pros:

- Proponents note that the majority of local government actions during the first round of planning under the GMA is nearing completion. They believe that the number of appeals to the boards will decline in the near future and that the cases before the boards will tend to involve site specific issues and will involve fewer broad public policy issues. They argue that these types of cases are more appropriately handled by the judicial system.

Cons:

- Opponents of this option argue that there will continue to be important public policy issues involving the implementation of GMA. They believe the expertise provided by the boards will be an important tool for resolving these issues.
- Some in the environmental community do not believe board case loads will decline. They point out that the need to address ESA and other environmental and growth management issues will result in GMA plan amendments and probably result in more appeals.
- Some have suggested that the controversy over the GMHBs has been largely due to ambiguity and uncertainty over the implementation of the GMA. They do not believe there any inherent problems with the boards or the quasi-judicial review process justifying elimination of the boards.

Recommendations

Although nearly all parties agree that the current system for review of land use and environmental decisions is not perfect, there is no consensus to support any major changes to the land use and environmental appeals process at this time.

There is speculation that GMA appeals will diminish over time, however the Growth Management Hearings Boards currently have an adequate work load. The Commission's recommendation is to maintain the status quo for the time being, while giving further study to the alternatives and the issues that divide the constituents who care deeply about this issue.

Some of the issues on which there are significant divisions include:

- The environmental community, neighborhood groups, and tribes believe that the existing layers of appeals serve as an added element of environmental protection. They argue that the current appeal system works well and that there is no evidence showing any significant problems. They point out that many of the environmental statutes address matters that are of state-wide concern and that the appeal process needs to assure that those state-wide interests are protected. At a time when salmon recovery is a concern, they advocate that this is not the time to tinker with the Shoreline Hearings Board. They also cite to the expertise of the Shoreline Hearings Board and the Growth Management Hearings Boards in environmental and land use matters. They also prefer administrative boards because such forums are more accessible to non-lawyers. Some neighborhood groups view state or regional administrative boards as more independent of local elected officials than superior court. Environmental groups object to one provision added in 1995 that provides for an award of attorneys' fees to the prevailing party in cases on appeal to the Court of Appeals. If the plaintiff has not prevailed before the local government or the superior court and loses at the Court of Appeals, reasonable attorney's fees can be imposed against the plaintiff. They believe the potential for an award of attorneys' fees acts as a disincentive for the filing of legitimate actions.
- The business community cites to duplicative and inconsistent appeals statutes that can result in one project being appealed to different forums. They cite to the cost of de novo review, where local government proceedings on shoreline permits become meaningless if appealed to the Shoreline Hearings Board. They express concern with the Growth Management Hearings Board substituting its judgment for that of local elected officials and believe that superior courts have more experience in respecting the separation of powers.
- Local governments express frustration with the shoreline permitting process where new information and evidence may be produced at the de novo hearing, without giving local elected officials the right to review the new evidence. They would prefer an option that would provide for a hearing on the local government record if the local government conducts the hearing consistent with minimal standards for the conduct of administrative hearings. Local governments also referred to the "stove-piping" of issues that can occur under the current system, where shoreline and upland impacts are reviewed in two different systems, when GMA was directed at an integrated approach. Some local governments also expressed frustration with having an appointed board overturning the decision of local elected officials.
- State agencies had differing views. WSDOT spoke in favor of the status quo. Ecology and DNR agreed that in the perfect world, they would be able to present their concerns to local officials first. The current shoreline permit system allows state agencies to wait and raise their concerns for the first time in an appeal to the Shorelines Hearings Board. Although they recognize the potential for unfairness and inefficiency in such a system, it

is a personnel resource issue. At present, they do not have the staff or other resources to stay informed and participate in all local projects. Even if the agency is notified of a project, it is not always adequately funded to participate in the local permit review process. The tribes have similar personnel resource issues.

- Some rural land owners believe that the Growth Management Hearings Boards have too much authority. They see the judicial system as the forum to correct the problems created by the boards. These rural land owners believe that judicial review combined with governor sanctions are the best tools to ensure that counties and cities are complying with the GMA. They believe that this system will also honor the GMA's promise of local control.
- The Commission's agricultural representative from Eastern Washington noted the importance of geographic diversity of the decision makers participating in the appeals process. He felt it was important to maintain that diversity in any appeal process.

[14] RCW 36.70C.

[15] These include the Pollution Control Hearings Board, Shoreline Hearings Board, Forest Practices Appeals Board, Hydraulics Appeals Board, and the Growth Management Hearings Boards.

Supplement E

Increasing Agency Responsiveness and Accountability
Case Study of Renton's Regulatory Reform

RENTON: A CASE STUDY IN REGULATORY REFORM

In Renton, the call to change came from complaints from the business community and the Chamber of Commerce, who were (rightfully) upset with the slow, unpredictable and costly permitting process in Renton, and the mounting backlogs of permit applications. The Mayor at the time told the managers that we needed to correct this situation, in an initiative that he termed "getting to yes".

At the outset the permitting regulatory reform process in Renton took about two years (with continual progress and improvements being made during that time period). Outcomes included: Renton's site plan approval process, including environmental review and site plan determination, formerly took at least 26 weeks. Now we take 10 to 12 weeks. Full subdivisions, including environmental review, preliminary plat approval, and construction permit issuance for streets and utilities, construction and inspection of these facilities, and approval and recording of the final plat so that lots could be sold, formerly averaged about 80 weeks. Now it averages 34 weeks. In two years, Renton reduced their turnaround time by over 50% without changing or adding to staff, and without negatively impacting residents or the environment. The reason: they found in the review and permitting process numerous inefficiencies, duplications, stops and starts, moving targets, lack of individual accountability, and most important, lack of clear direction from management on such critical issues as permit turnaround time goals and customer service expectations.

RENTON'S REGULATORY REFORM – WHAT WE DID

1. **RECOGNITION OF PROBLEM AT THE TOP:** The Mayor at the time was hearing significant complaints from the business and development community about Renton's flawed regulatory and permitting process. He also recognized that sustainable economic development was essential to Renton's vitality and financial future, and that the flawed regulatory process was interfering with that essential need. After investigating the situation, he determined that there was a real problem, and that changes needed to be made.

2. **THE MAYOR ISSUES STATEMENT OF PROBLEM, AND ORDER TO CORRECT:** The Mayor met with the Department Administrators, including myself, and clearly stated the problem. He tasked the Department Administrators to investigate the problem, establish improvements to the regulatory and permitting process, and to implement the improvements. He made it clear that he would rely on the expertise of his management staff to resolve the problem, but made it equally clear that we would be held accountable for our success or failure. He requested regular progress reports, and directed us to get to work immediately. He gave a name to the initiative, "Get to Yes", meaning proactively finding a way to accommodate the city's needs to encourage sustainable economic development. Naming the initiative turned out to be very important – it gave the initiative an easily recognizable identity in the minds of all employees.

3. **ADMINISTRATOR EVALUATES PROBLEM WITH DEPARTMENT MANAGERS:** First, the mission had changed: previously the City had not much cared if developers received their permits or not, and so the emphasis on permit review was

intense scrutiny by staff to assure that we achieved "the perfect project". Renton had established an elaborate, duplicative, and unclear review process to assure that every element of a project was evaluated and then reevaluated. Their reviewers had no hesitance in continually requesting new information from the applicant, or moving the target or changing the requirements based on a sudden "new opinion". There were numerous starts and stops, and staff did not place much priority on the amount of time the process took. They realized, with some chagrin, that this convoluted process was the result of their own management. They had not established permit turn around time goals or customer service as a priority. Left pretty much to themselves, staff did what they did best (and liked most): evaluate, scrutinize, implement their training, call for modifications and changes to achieve perceived improvements. Permitting time became interminable, and all the while permit applications backed up. They determined pretty quickly that the problem was not insufficient staff resources. Rather, they would have to change the mission, establish new priorities, educate the staff on these new priorities, simplify the process, and instill an improved and better defined customer service ethic in the staff, and make the individual staff members accountable for achieving these new directives.

4. **MESSAGE TO STAFF:** Management told the staff that the mission would be changing, and that the directive had come from the top. The "get to yes" initiative was explained, and staff was told that they would be relying on their expertise to help bring about the needed changes. They took great pains to let them know that the changes were necessary but would be participatory, and that they would be key players and change agents. They also tried to let them know that the changes were due to a new direction, not because they were doing a bad job. They encouraged their suggestions. To achieve results, they identified that was needed to expedite the process, provide more proactive management so that the staff would get the message, improve customer service, set goals and timelines, and demand accountability from the staff members.

5. **STREAMLINING THE PROCESS:** Two elements had to be addressed: assessment of local laws established by the City Code to determine whether code changes would be needed to implement streamlining of the permit review process, and review of their internal administrative process. The most productive part of the process streamlining efforts was the work with internal administrative process. They first charted their administrative process for several of the most prevalent types of land use permit. They did this by drawing process flow charts. They made sure that every step was reflected in the flow charts. The results were somewhat horrifying. There were so many nodes and loops in the flow charts, and so many series rather than parallel reviews, that the flow charts could only be fit on poster boards! The processes were replete with duplications, with start and stop points, with assembly line type approaches where one piece of review was done at a time, in series, and which allowed the whole review process to come to a screeching halt if there was a problem with one small element of the review. They immediately set to work chopping out redundancies (actually did away with a whole staff-composed review panel that did not add much value but slowed the process down), changing series steps to parallel steps so the process would not be halted due to minor issues, and took a rigorous "value engineering" approach in which steps were removed which did not add sufficient value to the process to justify the time and staff resources they consumed. They involved staff in this effort, but it was the managers who made the decisions. Very quickly they arrived at streamlined processes that in themselves not only

sped up the permitting process, but freed up staff resources to tackle the growing backlog of permit applications. They were also prepared to make adjustments as needed if the revised processes had unforeseen negative consequences, but found this was rarely the case. This step solved part of the problem, but there was still work to do.

6. **PROACTIVE MANAGEMENT:** They worked hard to make it clear to the employees that the mission was changing and why, explained the "get to yes" initiative from the mayor, and worked with staff constantly to familiarize them with the new streamlined processes. They also worked to instill an improved customer service ethic. They made sure they knew that the goals of professional permit review, protection of the environment, protection of the neighborhoods, proper public notification were as strong as ever, but they were overlaying on top of that an improved process to accomplish those goals. And they were adding new goals to the others: established permit turnaround times, and superior customer service requirements. They found that many of their employees did not view permit applicants as "customers" at all, but rather as "the enemy" who wished to encroach on neighborhoods and pillage the environment. They identified quickly that permit applicants had to be perceived as customers by staff if they were going to accomplish our mission, and they worked hard at this (this requires a continuing effort). They had continued resistance (of the passive/aggressive type) from a couple of employees, and they ultimately had to be told that the mission had changed and they had a choice to make: accept and participate in the revised mission, or find work in a place more congenial to their philosophies. No one ultimately lost their job.

7. **SUPERIOR CUSTOMER SERVICE:** This was one of the most important features of our regulatory reform effort. None of the other steps would yield success if they would not be able to instill an improved customer service ethic in the staff members. This effort had several elements:

   - Identify permit applicants as customers rather than "the enemy". Permit applicants must be treated just like businesses must treat their customers. Because government has the power to operate like a monopoly is not an excuse for poor customer service.

   - Superior customer service involves prompt communication and response to questions. Set a goal of responding to all customer questions within 24 hours.

   - Establish turnaround times, and make individual staff members responsible and accountable for maintaining the permit application turnaround times for their assigned projects.

   - Establish a work ethic in which delays are considered just as unacceptable to staff as they are to the permit applicants, and in which the customer concerns and needs actually matter.

   - Establish guidelines as to when enough review is enough review. In Renton this took the form of what was called "the 80% rule". It was recognized that 80% of the time and effort was being dedicated to the last 20% of improvements in a project. Very often, this last 20% was subjective – improvements in the eye of the reviewer. They determined that expending 80% of the time and effort on the final 20% of the improvements was placing them in a situation in which the ends did not justify the

means, both in terms of invested staff resources and actual value added to the project. They therefore established rules governing at what point in the review process new review comments would no longer be accepted or new information requested (unless there was a demonstrated major unforeseen need, and in these cases the reviewer would be taken to task for not foreseeing this need earlier in the review process).

- Establish staff accountability: meeting turnaround targets is an important element of the staff member's annual performance review. Continued failure to meet these targets could subject the staff member to corrective actions.

- Establish a sense of staff advocacy for the permit they are reviewing. Create an approach in which staff utilizes their skills to resolve problems rather than to set up roadblocks.

These were the steps that Renton took in our regulatory reform process, and they have achieved an absolute turnaround. Regulatory staff processes permits and other land use actions in less than half the time that they did five years ago. In addition to helping to achieve the City's larger goals of promoting sustainable economic development and improving City revenues due to the more vibrant economy in the City, expanding the job base, and improving the standard of living, they also have achieved a good reputation with the development community. The customers are pleased with the changes, and staff can handle a much bigger work load since they are spending less time with each individual permit application. The work force has been freed up and they are achieving much higher levels of productivity. Protection of the environment and the neighborhoods from impacts of development have remained high priorities, and have not suffered. In short, every interest has been a winner.

Supplement F

Permit Processing Deadlines

Permit Processing Deadlines
Thoughts and Ideas

I thoroughly understand and appreciate the frustrations of permit applicants who have received apparently unprofessional treatment from agencies while trying to get applications considered and approved. While we don't have statistical proof of the extent of the problem (hence the need for benchmarking on this issue), the quantity and specificity of anecdotes documenting this treatment indicate that there is indeed a problem.

I don't support the "negative incentives" solutions suggested in our report (especially the notion of deeming a permit automatically approved upon a deadline being missed) for the following reasons:

1) Such measures do nothing to get at the underlying causes of the issue of delay in permit review. These causes are best addressed by many of our other recommendations, particularly our top priority recommendation for a Reg Reform Secretary with broad powers . Note the success of the Renton model, which provides only one disincentive (poor performance evaluation), and does NOT forfeit permit fees nor issue permits automatically when deadlines are exceeded.

2) The automatic permit could in fact cause serious unintended consequences. Several that come to mind right away are:

    a. Ron Sims' concern that the threat of automatic permits will likely motivate some permit examiners to deny approval of the permit.
    b. The promise of an automatic permit after missed deadlines provides a strong incentive for an unethical applicant to be uncooperative in supplying needed information, etc., and then simply wait for the clock to run out.
    c. I also can't help but wonder if it is advisable for the state to be issuing permits for projects that have not been properly scrutinized for compliance with state laws and regulations. This does not seem like a very responsible way to deal with a review agency's culture and personnel problems, which appear to be the main cause of these delays.

I think we could better accomplish the goal of efficient, professional permit review by other means, taking lessons from both the Renton and California models. If any of the following suggestions are in fact already existing practices at DOE, please forgive the duplication, but I am more familiar with permitting at the local level and can only assume from the criticisms leveled at it that DOE is not, in fact, doing any of the following:

1) Improve customer service and communications throughout the process, starting with pre-application. DOE should offer fact sheets and information packets on its permit processes, model permit applications and permits, workshops for applicants covering some of the most frequently encountered questions and issues of common concern, and most importantly, an assurance that there is a real person that will answer applicants' questions and help them track the progress of their application.
2) If it does not already do so, DOE should have pre-application conferences for applicants, following the model used by California that brings all parties to the table who will be

involved in processing the permit. In the case of a consolidated permit process, this would include people from each involved agency, with someone clearly designated as the lead.

3) Model timeframes should be developed for each step of the process, as California has done. Steps needing timeframes should include: determining completeness of an application; determining whether additional information requested of the applicant does in fact satisfy the request; reviewing the completed application and determining whether or not it should be approved. Model timeframes might vary according to the type of permit being requested, based on complexity of the type of permit, amounts of information needing review, etc.
4) At the pre-application conference, or shortly thereafter, the lead staffperson (one should be designated for each project) and the applicant should negotiate what both believe would be realistic timelines for each step of the particular permit being sought, using the model timeframes for guidance but also reflecting the particulars of the project under review. The agency representative should be precise about what will be required of the applicant at each step for which timelines are being negotiated. The product of this negotiation should be a signed agreement.
5) If agency staff determines at any point that he/she foresees difficulty meeting the agreement re timelines, this should be discussed immediately with the "zone manager" or supervisor, who should provide suggestions to remedy the problem, encouragement, or additional assistance if needed.
6) If after going through step #5 above, the reviewer is still not able to meet the deadlines in the agreement, or if the applicant violates the agreement, either party can bring the matter to the Secretary of Reg Reform or his/her independent designee for immediate adjudication. Alternatively, both parties have the option of renegotiating the agreement to their mutual satisfaction.
7) Any request for additional information directed to an applicant must be concise, pertinent and specific, and if unclear to the applicant should be explained in person. There are too many complaints about the "bring me a rock" syndrome. The time needed for additional information to be provided to the agency should not count towards the deadline. However, the "chess clock" notion only works if the agency in good faith provides clear, understandable and pertinent requests for additional information. Consider the option of having supervisors review and approve requests for additional information, if this can be done expeditiously. This ensures supervisor awareness and provides some check on the clarity and relevance of the request.
8) As noted in # 5 above, anticipated problems with meeting any of these deadlines should be flagged early on and discussed with the permit reviewer's supervisor, who may have constructive suggestions for how to actually meet the deadlines. Should the permit reviewer consistently fail to meet agreed upon deadlines, and not be upheld in deadline adjudications by the Reg Reform Secretary, this would effect the performance evaluation of that individual.
9) There needs to be a clear tracking mechanism for each permit application, preferably computized, so that applicants know where their application is and who is looking at it at any given time.
10) If multiple reviews are needed because of the complexity of a particular project, then simultaneous review (called "parallel" in our report) is obviously preferable to sequential review, which adds unnecessarily to review time.
11) For complex projects requiring several reviewers, the entire review team should be brought together with the applicant and the supervisor (zone manager) for the

preapplication conference, and again at key strategic points during the process. Close collaboration and communication are necessary to avoid duplication, conflicts and the "black hole" effect.

12) All staff should be well trained in the technical aspects of their job, as well as in the basics of customer service and good management.

The above are all practical steps, which, in total, represent key components of the "culture change" which we recommend in our report. They also represent good customer service. They may be a little more staff intensive than the current practice of simply leaving each reviewer to do his/her job independently, apparently in a supervisory vacuum.

Success for these reforms depends on strong leadership from above, and on a thorough retraining of staff to understand the new mission and their role in implementing it. I agree with the smart psychology of Renton's approach, which entailed describing this NOT as a result of people doing things wrong in the past, but simply as a new direction which they are required to implement. I think it is also important to stress to staff that their expertise and involvement in the changes would be crucial, and to mean it. Educating and motivating staff, and giving them clear direction for change, are essential to success.

Careful evaluation of the problem in concert with top management, as was done in Renton, is a critical first step. This evaluation may also reveal that some things are being done well by the agency, and this must be acknowledged and supported.
The 80/20 rule should be looked at carefully for application to any agency undergoing regulatory reform, and for its ability to withstand appeal.

Lastly, we should recall our history regarding large state agencies with complex, multi-faceted missions—such as DSHS. For as long as I've been observing state government (nearly 30 years) there has been a constant tension between two models for this agency. One is the large, centralized agency which performs all the functions relating to social and health services—what we have today. The other is a series of smaller departments each of which is more mission-specific, or region-specific. The advantages and disadvantages of each model are obvious, and there is no perfect answer. But it may be that DOE has too much to do, too many diverse tasks, and could perform fewer of them better. It might also be easier to accomplish reform in smaller departments with more focused missions. Bud's idea of removing water rights decisions from DOE may have merit. On the other hand, much is being done currently to fix this and related problems, so this particular change may ultimately prove unnecessary.