Surveys, Subdivision and Platting, and Boundaries

Washington State Laws and Judicial Decisions

Bureau of Governmental Research and Services
Report No. 137 (Revision of Report No. 96, 1949)

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WASHINGTON STATE LAWS AND JUDICIAL DECISIONS

Information for City Engineers, Surveyors,
Civil Engineers, and Attorneys

By
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PREFACE

The subject of surveys, subdivision and platting, and boundaries is a matter of concern primarily to city engineers, city planning commissions, and various federal, state, and county officials, and also to surveyors, title companies, and private engineering firms. The legal requirements and practices concerning this subject are not always clearly understood.

This report is a complete revision of Report No. 96 published under the same title in June, 1949, and considerable material has been added to it. Since the original report was published, a number of significant statutes and amendments relating to the subject matter of this report have been enacted. In addition, a substantial number of decisions have been rendered by the State Supreme Court of Washington and a few by the United States Supreme Court that contain important rules of law affecting title to real property, boundaries, platting, and subdividing, and have thereby clarified many points which had not previously been adjudicated in this state. As in the case of the earlier report, this publication has been prepared as a result of the requests of public officials and others to provide an up to date working manual for those dealing with problems of boundaries, platting, and subdividing. In preparing the report, an attempt has been made to analyze the various constitutional provisions, laws, and judicial decisions with which a surveyor should be familiar. Also included in the report are data relating to problems of location of tracts of land in relationship to water and riparian rights in connection therewith under state and federal jurisdiction, rules for establishing rights of way and abandoning the same, and certain aspects of land boundaries and monuments pertaining to the subject of surveys and subdivision and platting. The provisions of the constitution and laws of the State of Washington applicable to this subject have been compiled and classified herein to make them readily accessible for reference and use.

Since the subject is of concern to the engineers and attorneys of Washington municipalities, public officials, and various public bodies, as well as the land surveyors, engineers, and attorneys in private practice and title insurance companies, the preparation of the report has been undertaken by persons who have had special training in these fields. Joshua H. Vogel, Planning and Public Works Consultant of the Bureau of Governmental Research and Services, is a qualified land surveyor, civil and structural engineer, and architect. Ernest H. Campbell, Associate Director of the Bureau of Governmental Research and Services, is a qualified lawyer who has had extensive experience both in private practice of law and in governmental service. Wilbur K.

Wilson, Bureau Assistant Research Associate, is a graduate of both the Department of Civil Engineering and the School of Law of the University of Washington. In addition to the work of those designated as authors of this report, acknowledgment is given to George D. Smith, Bureau Research Associate, who rendered material assistance in checking certain of the data included in the report.

Special acknowledgment also is given to Hiram M. Chittenden, Associate Professor of Civil Engineering, University of Washington; Alfred L. Miller, Professor of Mechanics and Structures, Department of Civil Engineering, University of Washington; Mr. Carl E. Morford, a civil engineer and land surveyor of Seattle, Mr. Ray L. Gardner, a civil, planning, and structural engineer and land surveyor of Seattle; the Office of the Commissioner of Public Lands of the State of Washington; Raymond F. Reed, Chief Engineer of the Office of the Commissioner of Public Lands; Earl Coe, former Secretary of State of the State of Washington; Mr. R. W. Finke, City Engineer of Seattle; Mr. Ralph H. Foster, Vice President of the Washington Title Insurance Company; Mr. Allen Hitchings, civil engineer and land surveyor of Seattle; and Brig. General Edward Clarence Dohm, W.N.G. (Ret.), Secretary of the License Department of the State of Washington, and professional engineer.

It is hoped that this publication will serve as a working manual for public officials and others attempting to solve problems arising with respect to land surveys, subdivision and platting, and boundaries.

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ILLUSTRATIONS

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I. INTRODUCTION

In order that surveys, subdivision, platting, and the determination of boundaries may be conducted and ascertained in an orderly manner, and the standards and rules relating thereto prescribed by statute, rules and regulations of various governmental agencies, and judicial decisions applied properly, it is imperative that public officials and governmental agencies assume the responsibilities in these areas with which they have been charged by law, and that adequate funds be appropriated to enable such officials and agencies fully to discharge such functions.

For example, under existing law the Board of Natural Resources is required to locate and establish harbor lines (including both "inner and outer," these two defining the limits of the "harbor area"), and to relocate erroneously established inner harbor lines and to determine harbor areas in the navigable waters of all harbors, estuaries, bays, and inlets of the State of Washington whenever such navigable waters lie within or in front of the corporate limits of any city, or within one mile thereof on either side.[1]

The Commissioner of Public Lands is required, simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon as practicable, to survey and plat all tide and shore lands of the first class not theretofore platted, and, in platting, to lay out streets to be dedicated to public use and public waterways.[2] The Commissioner is also required to prepare plats showing all tide and shore lands surveyed, platted, and appraised by him in the respective counties on which the location of all such lands with reference to the lines of the United States survey of the abutting upland are to be indicated,[3] and to correct erroneous plats and field notes of tide and shore lands submitted to his

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1. RCW 79.04.020, 79.04.030, 79.04.040, 43.65.040 and 43-.65.050, and Amendment 15, Constitution of State of Washington. The Board of State Land Commissioners was abolished and its powers, duties, and functions were transferred to the Department of National Resources by Sec. 7, ch. 38, Laws of 1957.

2. RCW 79.16.200.

3. RCW 79.16.220.

office by prospective purchasers.[4] The Commissioner of Public Lands is also required to plat into lots and blocks all unplatted state lands, except capitol building lands, within the limits of any incorporated city or town or within two miles of the boundary thereof, when the valuation of such lands is found by appraisement to exceed one hundred ($100.00) dollars per acre before same are offered for sale.[5]

All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, are required definitely to be established by surveys jointly made by the surveyors of all the counties affected thereby and approved by the board of county commissioners of such counties, or by a survey made by the surveyor general, upon application by the board of county commissioners of any county affected thereby.[6] The Director of Highways and the county engineer are required to fix permanent monuments at the original positions of all United States Government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers whenever any such original monuments or markers fall within the right of way of any primary state highway or county road. The same officials also are required to aid in the re-establishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any primary state highway or county road, by permitting inspection of the records in the office of the department of highways and of the board of county commissioners and of the county engineering office.[7]

City and county planning commissions and the legislative bodies of cities and counties have the responsibility for approving plats, subdivisions, and dedications, and are required to establish regulations controlling the form of plats, subdivisions, and dedications, and are to submit such regulations to the planning authority on the state level prior to adoption.[8] These same commissions and legislative bodies have been empowered to correct defects in plats and to replat property.

The county assessor is required to outline a plat of irregular subdivided tracts or lots of land, other than any regular government subdivisions, and to notify the owner thereof with a request to have the county engineer survey the same, and cause the same to be platted in numbered lots or tracts.[9] However, when any county has in its possession the correct field notes of

4. RCW 79.16.350.
5. RCW 79.12.040.
6. RCW 36.04.400.
7. RCW 47.36.010 and 36.86.050.
8. RCW 58.16.020, 58.16.030, 58.16.040, 58.16.120.
9. RCW 84.40.170.

any such tract or lot, a new survey is not mandatory, and such tract may be mapped from such field notes.

The foregoing serve to indicate some of the statutory responsibilities of public officials and governmental agencies with respect to surveys, subdivision, platting, and the determination of lines and boundaries; in addition, a number of public officials have been empowered to perform certain functions at their discretion which have an immediate relationship thereto.

II. NEED FOR SURVEYS AND MAPS

By land surveying, mapping, and recording of maps made, public officials and private property owners would save much money. Private owners would avoid many costly mistakes, lawsuits, feuds, and much mental bitterness. Wasteful duplication of public and private surveys frequently results from the fact that mapping and recording is either inadequate or not done at all. Funds spent on public works are often wasted because they have to be reconstructed, and because failure to conduct surveys frequently results in placing them in wrong locations and on improper grades.

If all property could be accurately surveyed and platted and the maps reflecting the survey recorded, much of the future cost of carrying lengthy inaccurate legal descriptions would be obviated, as lot and block number designation could be used. Control surveys, state-wide plane coordination, river and harbor surveys, and vertical level systems should be coordinated on standard maps.

The effects of good or poor work in the administration of surveying and mapping activities by city engineers, or by counties and state as well, materially affect the future life of the governmental units and of the property owners, either public or private, for many years.

Marks are constantly being lost due to floods, construction, vandalism, and natural decay. A permanent organization therefore must be set up to maintain complete records and to check adequately the existence of the surveying marks on the ground.

The U.S. General Land Office sectionized the land many years ago. Many of the original marks were wooden stakes, and over a period of years many of these have been lost. The confusion resulting from using the wrong mark as a section corner is almost unlimited in its extent. In many cases, lawsuits and the unnecessary waste of thousands of dollars of public money and hours of time have resulted. These marks are essential to the orderly use and transfer of ownership of the land. In order to buy or sell land, the boundary marks must be recognized or established.

Each surveyor now working in the field in each county needs the description of the marks and the distances and the direction

between them for the extension of his work. This information must be available in the county engineer's office of the respective counties. The office of the county or city engineer should then be responsible for the proper extension of the surveys within that county or city. These surveys would then become the accepted framework to which all future surveys should be referenced.

The Federal Government originally set the section corners; the state regulates their use; and the local communities are most interested in the maintenance of them.

Land surveys are necessary. The attorney may examine the chain of title to determine if a seller has a good and sufficient title to the property legally described and if he can make a legal conveyance of same to another party; the title insurance company can guarantee the title, insuring the buyer against loss due only to defects in the recorded title; but, without a survey, the buyer knows little about the physical existence of the property legally described, nothing as to its size and location, or whether the description actually represents the parcel of good earth that the buyer observed and hopes to obtain for use.[10]

Both the private civil engineers and county engineers are bound to exercise that degree of care that a skilled civil engineer of ordinary prudence would exercise under similar circumstances.[11] In Taft v. Rutherford,[12] the Court found that the defendant civil engineer entered into a contract with the plaintiff to make a survey of a lot on which the plaintiff desired to build an apartment house; that the defendant made an erroneous survey either by overlooking the parking strip or misreading the figures upon the chain; and that he therefore did not exercise

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10. Any person who, at the request of the owner of any real property, or his duly authorized agent, surveys, establishes, or marks the boundaries of, or prepares maps, plans or specifications for the improvement of such real property, or does any other engineering work upon such real property is entitled to have a lien upon such real property for the agreed price of the reasonable value of his professional services. RCW 60.48.010.

11. Ferrie v. Sperry, 85 Conn. 337, 82 Atl. 577 (1912); Commissioner of Highways v. Beebe, 55 Mich. 37, 20 N. W. 826 (1884).

12. 66 Wash. 256, 258,119 Pac. 740 (1911). In Ziebrarth v. Manion, 161 Wash. 201,296 Pac. 561 (1931) an encroachment upon a lot from 7 1/8 inches to 3 1/2 inches was held to render the title unmarketable. The Court quoted with approval language from Larson v. Thomas, 51 S. D. 564, 215 N. W. 927, 57 A. L. R. 1246 (1927) to the effect that encroachments of 2 inches and from 1 to 3 1/2 inches have been held to be substantial so as to render the vendor's title unmarketable.

due care. The Court held the defendant liable for the cost of removing from about five feet in the street the apartment house built by the plaintiff in reliance upon the correctness of the defendant's survey. The Court stated:

> "It is no doubt true that the owner may have in mind the construction of a cheap building, and so inform the surveyor at the time the survey is ordered, and afterwards change his mind and construct a large stone, steel, or other expensive building. In such case the surveyor might not be liable for the damages to the expensive building upon a mistaken location caused by an erroneous survey, because the survey was not made in contemplation of such building. But it seems clear, where the survey is made with reference to a particular building or use to which the lot is put, the surveyor would be liable for the damages naturally flowing from his error, because the parties had that use in contemplation."

The survey indicates whether or not the boundaries lie around the physical improvements if any, that the buyer expects to have. Perhaps the observed access to a public road is not actually there, as another private owner holds title to an intervening strip. Perhaps the public road is not properly located, and the observed auto driveway is on another man's land. Perhaps the sewer and water utilities constitute a trespass over another property and are subject to being cut off. Legal property lines must be run on the site whether it is for a city street, water or sewer location, or whether it is for a private piece of property. Only then can the public or private owner be assured of the results.

Fences, buildings, drives, walks, and streets are not evidence of property lines unless verified by a survey. Gaps, overlaps, and encroachments must be ascertained. Grades and levels must be known and established for permanent construction work by surveys on the site; maps and records of these must be kept accurately.

Over-all land maps and surveys will make possible settlement of ambiguities and errors in land descriptions and will determine the physical facts about adjoining properties and public lands.

III. TECHNICAL STANDARDS FOR PROPERTY SURVEYS[13]

The American Congress on Surveying and Mapping adopted the following set of Technical Standards for Property Surveys on June 28, 1946, for the use of the Congress, affiliates, and all other persons who have occasion to use them. They are recommendatory only, and not mandatory. The Congress authorizes any changes, alterations, amendments, additions, or deletions which may become necessary from time to time provided such variations are made with the consent, and under the direction of the proper officers or committees of the Congress. Any or all parts or revisions of these standards may be segregated for particular use in any locality requiring them.

A. "I. Land Titles and Location

"Every parcel of land whose boundaries are surveyed by a licensed surveyor should be made conformable with the record title boundaries of such land. The surveyor, prior to making such a survey, shall acquire all necessary data, including deeds, maps, certificates of title, centerline, and other boundary line locations in the vicinity. He shall compare and analyze all of the data obtained, and make the most nearly correct legal determination possible of the position of the boundaries of such parcel. He shall made a field survey, traversing and connecting all available monuments appropriate or necessary for the location, and coordinate the facts of such survey with the predetermined analysis. Not until then shall the monuments marking the corners of such parcel be set, and such monuments shall be set in accordance with the full and most satisfactory analysis obtainable.

"Any descriptions written for conveyance or other purpose, defining land boundaries, shall be complete and accurate from a title standpoint, providing definite and unequivocal identification of the lines or boundaries, and definite recitals as to use or rights to be created through such descriptions. Any form of description, regardless of presence or absence of any or all dimensions, but specifically tying to adjoiners, which fulfills the foregoing conditions, is acceptable. However, such description, insofar as possible, in addition to all necessary ties to adjoiners, should contain sufficient data of dimension, determined from accurate

13. "Technical Standards for Property Surveys," Surveying and Mapping, July-August, 1946, 210-213.

field survey, to enable the description to be completely platted. It is also advisable wherever correct surveys have determined the coordinate values of boundary corners or monuments recited in a description, to make proper reference thereto in the description by any appropriate recital.

"Any surveys made for purposes other than location of land boundaries need only the ordinary information and data necessary to fix the situs of the work to be done, by one or more ties to some known and accepted title boundary line or corner, together with such other data as may be required to tie the project into adjoining matters appurtenant."

B. "II. Maps

"Every land survey requires a map properly drawn, to a convenient scale, showing all the information developed by the survey; also a proper caption, proper dimensions and bearings or angles, and references to all deeds and other matters of record pertinent to such survey, including monuments found and set.

"If the survey is made for purposes other than land location, then the map should be conformable to the needs of the work authorized to be done, giving all the necessary information in conformity therewith.

"Wherever provided by law or whenever necessary to perpetuate valuable evidence of land line locations, a map of the survey should be recorded in a public office in accordance with the provisions or permissions of the law in the particular state in which the survey is made.

"Every map submitted to a client or presented as a public record must bear the name of the Licensed Surveyor responsible for the work, his official seal or license number, and the date."

C. "III. Coordinate Surveys and Base Triangulation Systems

"The use of the coordinate survey systems of the U.S. Coast and Geodetic Survey and the U.S. Geological Survey is to be encouraged in all states.

"The establishment of secondary triangulation systems tied in and properly related to such coordinate systems is also recommended.

"Wherever available, within reasonable distances, every land survey is to be connected with two or more monuments of the main or secondary triangulation system;

and the maps of such survey shall show the correct verified coordinates of such monuments and of at least two of the monumented corners of such survey."

D. "IV. Measurements

"Measurements shall be made with instruments capable of attaining the required accuracy for the particular problem involved. All tapes shall be calibrated to government standard for temperature and pull, and all measurements in the category of accuracy of 1 part in 10,000 or greater shall be made, taking into consideration such temperature and pull in the actual field work.

"All transits shall be maintained in close adjustment and the projection of lines shall be made with the system of double centering or proper adjustments made to field readings by predetermined coefficient of error. All angles with a transit shall be determined by the continuous repetition or run-up method, dividing the sum total of the angles by the number of repetitions for the average value of the measured angle.

"All leveling instruments shall be maintained in close adjustment, and the readings of elevations shall be made with equal foresights and backsights as nearly as practicable and/or proper adjustment made to field readings by predetermined coefficient of error.

"The minimum accuracy of linear measurements between points shall be 1 part in 10,000 on all property lines of boundary or interior survey. Preliminary or reconnaissance surveys shall maintain an accuracy of not less than 1 part in 5,000, except in those cases where general information only is to be obtained and no precise monumented corners are to be created.

"In a closed traverse the sum of the measured angles shall agree with the theoretical sum by a difference not greater than 5 seconds per angle, or the sum of the total angles shall not differ from the theoretical sum by more than 90 seconds, whichever is smaller.

"A circuit of levels between precise bench marks or a circuit closed upon the initial bench mark shall not differ more than 0.02 foot multiplied by the square root of the number of miles in the circuit, and in no case to exceed 0.05 foot, except in levels for preliminary or rough stadia control, in which case the allowable error of closure may be 0.10 foot.

"All field measurements must be balanced, both as to angles and distances, so that the dimensions

shown on the map of such survey will be mathematically exact; this will permit the proper use of the prorate method in field relocation.

"Bearings or angles on the map shall be given to the nearest 5 seconds; distances to the nearest hundredth foot.

"Accuracy of measurement in triangulation dimensions shall conform with the standards set by the U.S. Coast and Geodetic Survey."

E. "V. Monuments

"The type and position of monuments to be set on any survey shall be determined by the nature of the survey, the permanency required, the nature of the terrain, the cadastral features involved, and the availability of material.

"Monuments set in an inhabited area with improved streets, buildings, and other more or less permanent topographical features, shall be such as will remain for the life of such features and may be set in contact with or alongside of such semi-permanent structures with reasonable security. Monuments set in open country where their maintenance is to be continued for long periods shall be of a material such as concrete, rock, or metal, of sufficient size that they will not be readily removable and will be easily discoverable; and witness monuments of ready visibility shall be placed alongside or nearby, if necessary.

"Except in the case of original surveys, in which monuments are to be referred to in the record, permanent monuments shall not immediately be placed on lines or in positions where their destruction is more or less immediate by reason of construction; but semi-permanent monuments, such as stakes, pipes, or other material, shall be set in protected spots at definite known distances from the true corners for purpose of location of such corners after construction is completed. The surveyor shall make a definite commitment of record, that he will correctly set such true corners as soon as their permanence in position can be assured."

F. "VI. Planning and Design

"No standard is set for planning and design of land line location as to the form and position of such lines. Each particular problem carries its own plan and its own design within itself. A plan acceptable in one

locality or under some conditions may not be adaptable in another."

IV. STATE PLANE CO-ORDINATE SYSTEM

The entire case for the use of plane co-ordinates has been well summed up in a progress report prepared by a joint committee of the Real Property Division, American Bar Association, and the Surveying and Mapping Division, American Society of Civil Engineers.[14] The following excerpts from this report are, therefore, set forth below:

> "The Committee finds further that, in order to provide proper reference marks for fixing position and direction, a system of survey monuments should be established, connected by properly controlled precise surveys, and that the positions of these monuments, so determined should be expressed in terms of a co-ordinate system, preferably by plane rectangular co-ordinates. Descriptions of the monuments, together with their co-ordinates, must be recorded by some public authority and the record made available for public use.
>
> "The United States Coast and Geodetic Survey has developed a plan for the establishment of such inter-related monuments and systems of plane co-ordinates for defining positions. This plan has already been put in operation in several States and has won the immediate approval of practicing land surveyors and title examiners. Many thousands of monuments have been set and their co-ordinates have been determined. The plan is known as the 'State System of Plane Co-ordinates.' It has been thoroughly studied by the members of the Committee, and it is believed to offer an adequate remedy for the deficiencies described. The utility of the plan extends to so many fields other than that of land surveys and descriptions that the cost to the taxpayer for its adoption will be returned manyfold. It provides a basis for checking and controlling instrumental and aerial surveys for maps and plans required for all engineering development. The time and cost of establishing special control for each project are thus obviated. Furthermore, all existing data can be compiled, and boundary lines can be correlated without field determination."

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14. "Land Surveys and Titles" - first progress report of the Joint Committee of the Real Property Division, American Bar Association and the Surveying and Mapping Division, American Society of Civil Engineers, Proceedings of the American Society of Civil Engineers, Vol. 64, No. 9 (November, 1938), 1879-1882. The Secretary of the joint committee which prepared this report was Professor A. H. Holt, Worcester Polytechnic Institute, Worcester, Mass.

THE STATE SYSTEM OF PLANE CO-ORDINATES

"The entire United States is covered by series of triangulation stations which are physical marks on the ground. Most of the stations consist of concrete shafts, 4 ft. or 5 ft. long, set nearly flush with the ground, with bronze disks set in their tops which identify them and also contain a small hole which represents the exact position. Buried under each shaft is a short cylinder of concrete with another disk set directly under the surface disk. Usually, three more shafts with disks are set near-by and witness measurements are recorded by which the station can be replaced precisely if destroyed. In rock outcrops the disks are grouted in holes in the rock.

"All these triangulation stations are connected by precise surveys so that their relative positions are determined accurately. Thus, even if all the marks of many stations were removed, it would still be possible to replace them in their original positions.

"Since this net of triangulation stations extends over so large an area--the entire United States--it is necessary, due to the curvature of the earth, to express the positions of the stations in terms of a spherical co-ordinate system; that is, by precise latitude and longitude. As it is unnecessary to consider the curvature of the earth in the reduction of most survey data, the mathematics of this procedure is unfamiliar to all but a few specialists. It is clear then, in order to make them generally usable, that some form of plane rectangular co-ordinates must also be used to express the position of these stations. The U.S. Coast and Geodetic Survey has developed a plane co-ordinate system for every State, according to which the positions of the triangulation stations may be expressed. In the larger States several zones have been introduced, each zone having a separate origin. The zones are made as large as possible without introducing appreciable differences, caused by earth curvature, between measurements on the ground and distances as expressed by the co-ordinates. The variations thus introduced are so slight that they cannot be discovered by ordinary survey methods.

"It is planned that monuments will be established in convenient locations along highways and streets, and precise surveys will be made connecting these monuments with triangulation stations. The co-ordinates of the monuments can be determined by using the plane co-ordinates of the triangulation stations. In many States this work is well under way, and many municipalities are extending the monument system throughout their streets. By this plan the position of every monument in the system can be determined with relation to that of every other monument, so that it is inconceivable that the position of the system should ever be lost.

"To utilize the system a land surveyor must make a proper survey connection with two monuments. He can then either state the plane co-ordinates of the property corners in his description, or give the bearings and distances of two or more property corners from the monuments. With these data in the description there can be no question as to the precise position of the property. Its location is described accurately and permenently. Moreover, it is possible to determine, by examination of descriptions of this kind, whether all the parcels lotted in a certain tract will, in fact, fit into the tract.

"When once the title examiner has become familiar with such a system, he can determine, without a field survey and a surveyor's guess, whether the requisite land exists for the title he is examining. Surveys are thus co-ordinated, and, in fact, made part of one great survey which is all-inclusive.

"There are many applications of the system to engineering and mapping. It has proved of extreme value for tax maps and has been used considerably for that purpose.

"It is desirable that each State legislature enact enabling laws defining the system used in the State and naming it so that any co-ordinates used can be referred to by name.

. . . . . .

"It is also desirable that a bureau of surveying and mapping be established in each State to administer the co-ordinate system. Such a bureau should be the depository of control-survey data, should disseminate it to the public, and should maintain the monuments. The bureau should be equipped to aid counties, municipalities, and other political subdivisions, to extend the monumentation along the roads and streets. By proper supervision of the work and by careful checking of

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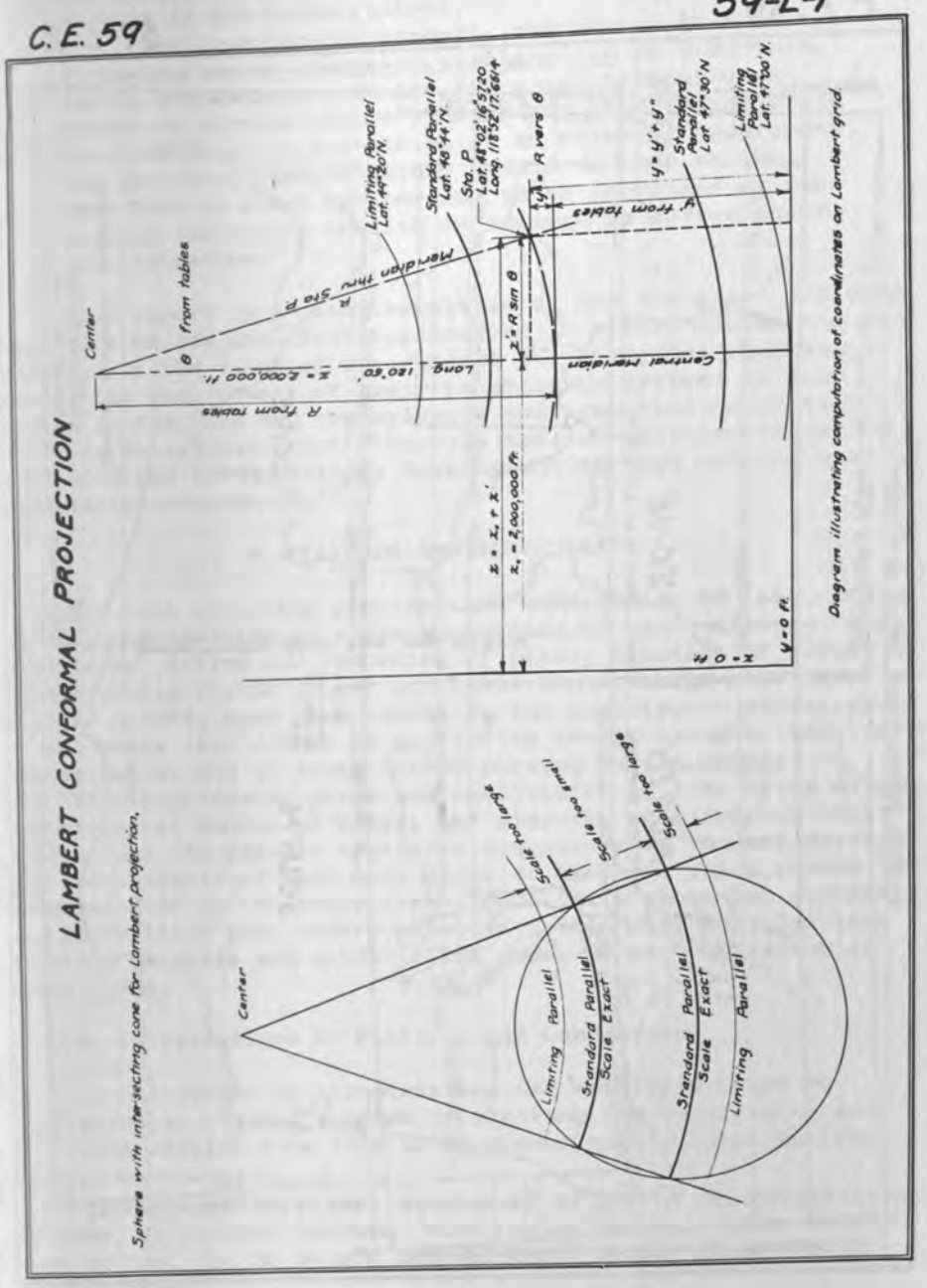

Fig. 1.

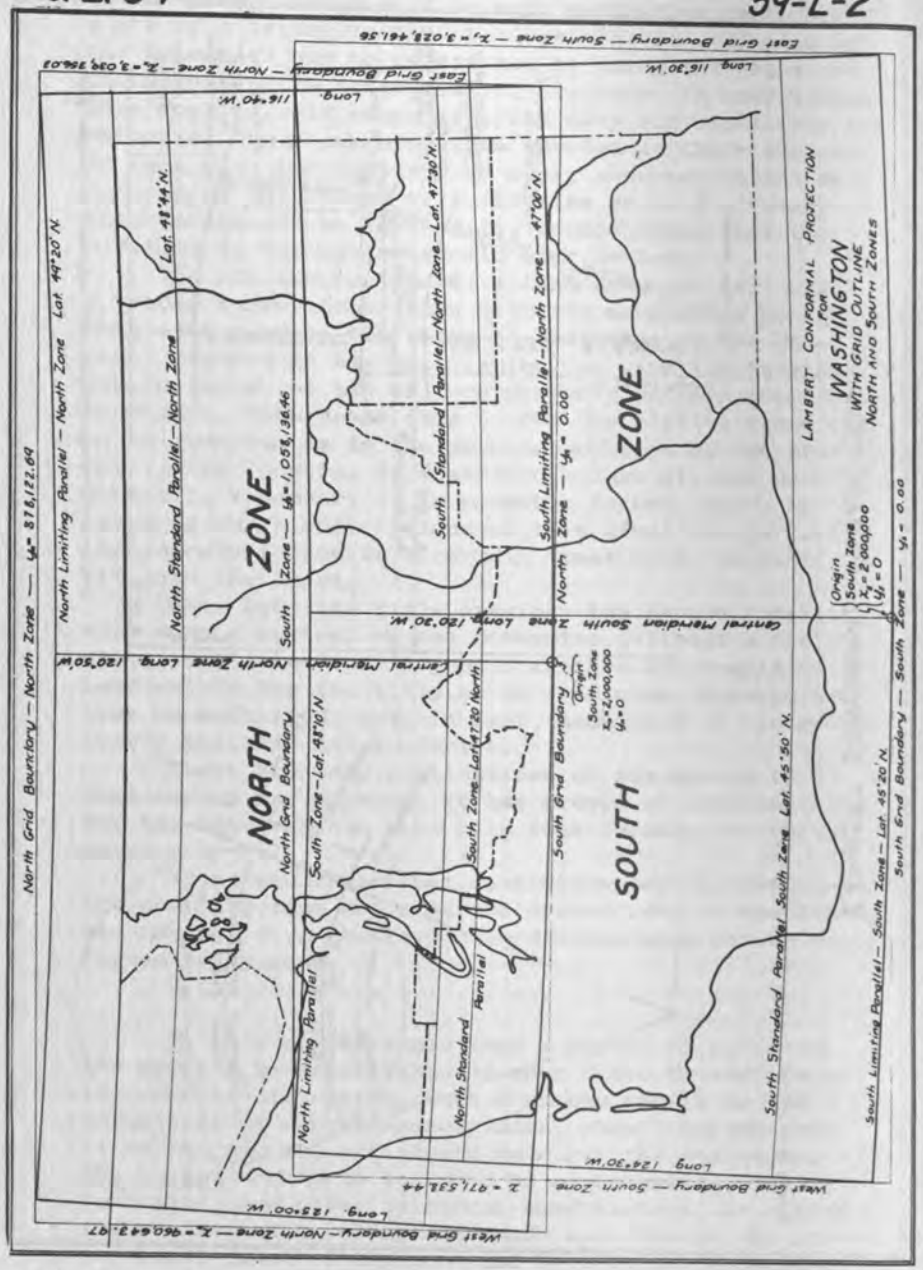

Fig. 2.

the results, the bureau would be able to include these surveys in the State systems.

"The Committee recommends, therefore, that each State legislature enact an enabling law as described herein and designate by law the establishment of a bureau of surveys either independent of existing State Departments or as a division of an existing department. The necessary appropriations should be made at the same time to start the bureau, to be increased as the work of the bureau results in savings in survey costs and litigation."

This report by a joint committee of our two great national societies of law and civil engineering is a very convincing indication of the value of co-ordinate surveying for land boundaries; the indorsement of their co-ordinate systems by such states as New York and Pennsylvania confirms that conviction. There is every reason for expecting that co-ordinate surveying will continue to show steady development through private use and legislative enactments.[15]

V. PLATTING AND SUBDIVISION

The laws governing platting and subdivision of land, dedication, and vacation of plats or portion of same, streets, etc., replatting, filing and recording of plats, vacation of established public rights of way not part of plats, and other laws of similar nature, have been passed by the legislature at various times. These laws differ as applied to incorporated cities, to county plats, and to areas unincorporated in the county.

When considering plats and subdivision of land lying along the shores of bodies of water, the planning commissions, their staffs, and the private engineers and surveyors who are surveying these tracts of land must refer to the laws which govern the relocation of old boundary lines, especially where our streams and shore lines have undergone considerable shifting. See laws relating to plats and subdivisions under VI in Compilation of Laws, infra.

A. Illustrations of Platting and Subdividing

A number of illustrations are set forth below to point up certain aspects of platting and subdividing and what results from lack of knowledge with respect thereto.

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15. See RCW 58.20.010 through 58.20.090 in the Compilation of Laws, infra, for statutes relating to the Washington Coordinate System. Ch. 58.24 RCW established a state agency for surveys and maps.

Illustrations given show:

Fig. 3. Wrong Type of Plat--Property lines cannot be located. If lake is lowered, extension of lot lines are subject to theoretical methods and some unhappy results.

Fig. 4. Shore Lands Location Unknown--When wharves are to be built, especially in cove marked Site No. 2, owner does not know how his boundaries extend over into water, and conflicts with neighbor's. No line of navigation has been established.

Fig. 5. Complete Land Plat.

Fig. 6. Complete Plat--Property staked out on shore line can be located and lake is definitely dedicated to public use. If water vanishes, land under water becomes public recreation area.

Fig. 7. Haller Lake--Lots located but use of street ends and lake indefinite. Ownership of land under lake assumed to be public, but is in considerable doubt. Dedication of street ends extends into lake indefinitely.

Fig. 8. Phantom Lake--Owners' lots all shown across water.

Fig. 9. Inner-Outer Harbor Line of Juanita Bay.

B. Suggested Regulations Regarding Unrecorded Plats

These suggested regulations regarding unrecorded plats have been framed to provide a practical method of dealing with our existing unrecorded plats and have been prepared for adoption by planning commissions and engineers.

1. In the case of an unrecorded plat, when no sales have been made, the owner will be prevented from recording such plat if it does not comply with the present regulations and will be compelled to make any necessary changes to insure such compliance, even to making an entire layout in some cases.
2. On the other hand, in the case of an unrecorded plat which conformed to former standards and in which sales have been made in the past and recorded by metes and bounds description, it manifestly would be unfair to the individial lot owner to make too extensive a change in the general platting scheme from which their lots were selected, even though there might be legal grounds to sustain such action.
3. RCW 58.08.010 requires that any person who lays off any town shall, previous to the sale of any lots

within such town, cause a plat of said town to be recorded. This statute applies only to the original platter of the town, and any owner of a lot other than the original platter in an unrecorded plat does not have to record the plat prior to the sale thereof.[16]

4. In view of the decision in Opsjon v. Engebo, supra, an unrecorded plat in which bona fide sales have been made must be recorded as staked and mapped insofar as those sales are concerned, but excluding the sold lots from the new plat to be recorded, unless these owners are willing and can be prevailed upon to join in on the new plat.
5. Any common law dedicated roads and any roads shown on the unrecorded plat would have to be considered in their present location and cannot be changed without consent of, or perhaps quit-claim deeds from, the owners of the lots already sold. Thus, in Seattle v. Hill,[17] the State Supreme Court of Washington observed that "Upon acceptance, the dedication became complete and irrevocable, and the dedicator and his grantees were thereafter precluded from asserting any ownership in the land inconsistent with its use as a public street."
6. The platter can only record his land as he has no control over the roads shown on the plat.[18]
7. Control of the proper area for a place of habitation, or the size of the area which would allow for the proper placing of underground sanitary sewage disposal systems, or other regulations, can be exercised under zoning regulations or deed restrictions. Example: Three small lots may be platted as such, but might have to be used and sold as a unit without necessarily changing the old lot lines of the plat. Our present zoning regulations and platting regulations cover such a situation.

RCW 84.40.170, which relates to platting irregular tracts, has some very useful features to help make possible the recording of unrecorded plats. It makes the cost, however, largely one to be borne by the county.

It seems essential that there be some funds budgeted which would make possible the cleaning up of the records of unrecorded plats and irregular tracts of land. These should be surveyed and

16. Opsjon v. Engebo, 73 Wash. 324, 131 Pac. 1146 (1913).
17. 23 Wash. 92, 99, 62 Pac. 446 (1900).
18. See Seattle v. Hill, supra.

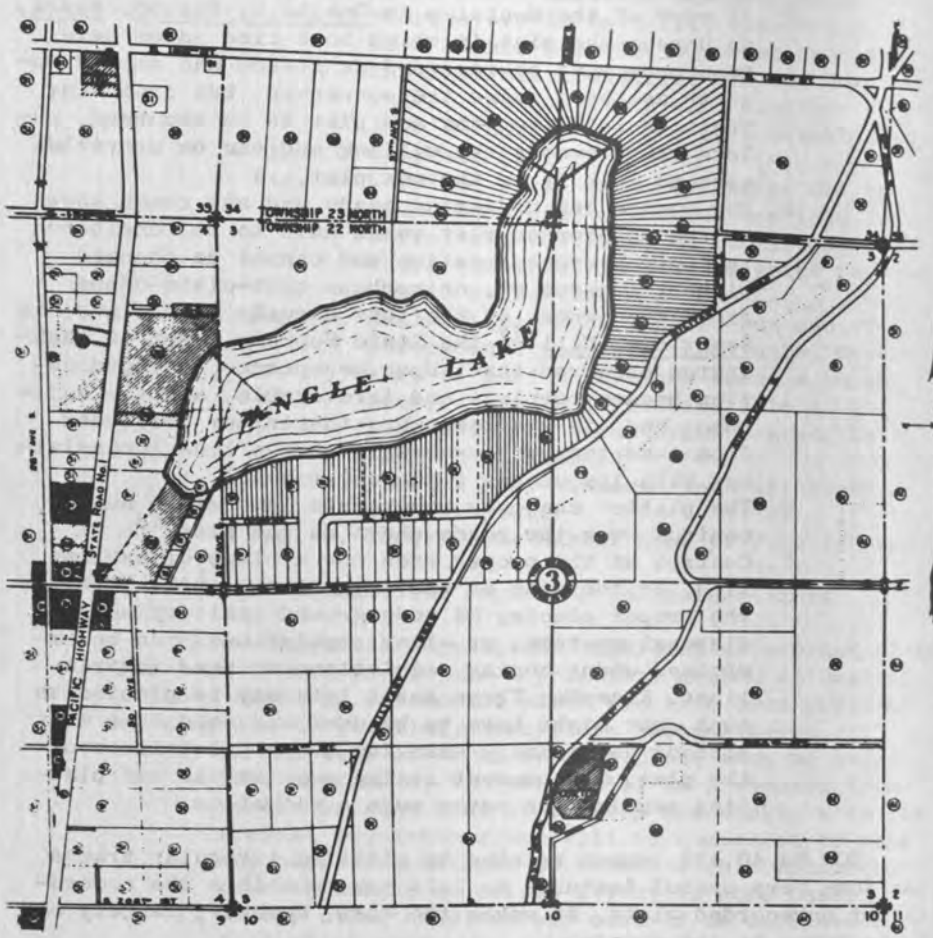

Fig. 3. WRONG TYPE OF PLAT. Property lines cannot be located. If lake is lowered, extension of lot lines are subject to theoretical methods and some unhappy results.

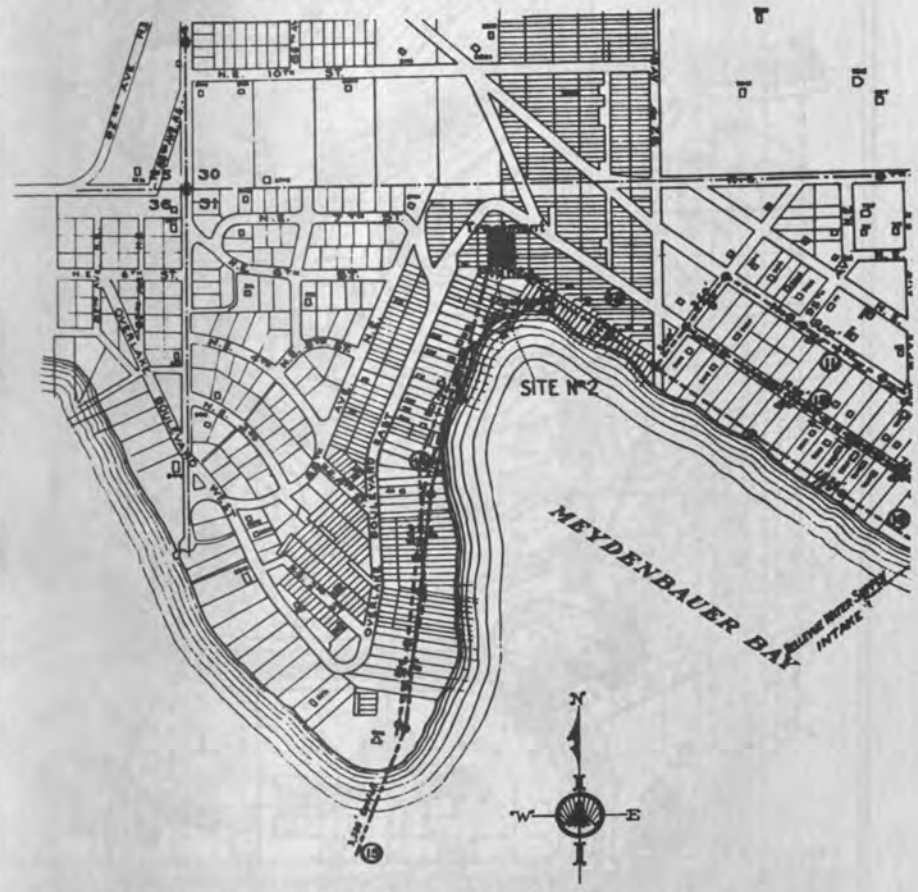

Fig. 4. SHORE LANDS LOCATION UNKNOWN. When wharves are to be built, especially in cove marked Site No. 2, owner does not know how his boundaries extend over into water, and conflicts with neighbor's. No line of navigation has been established.

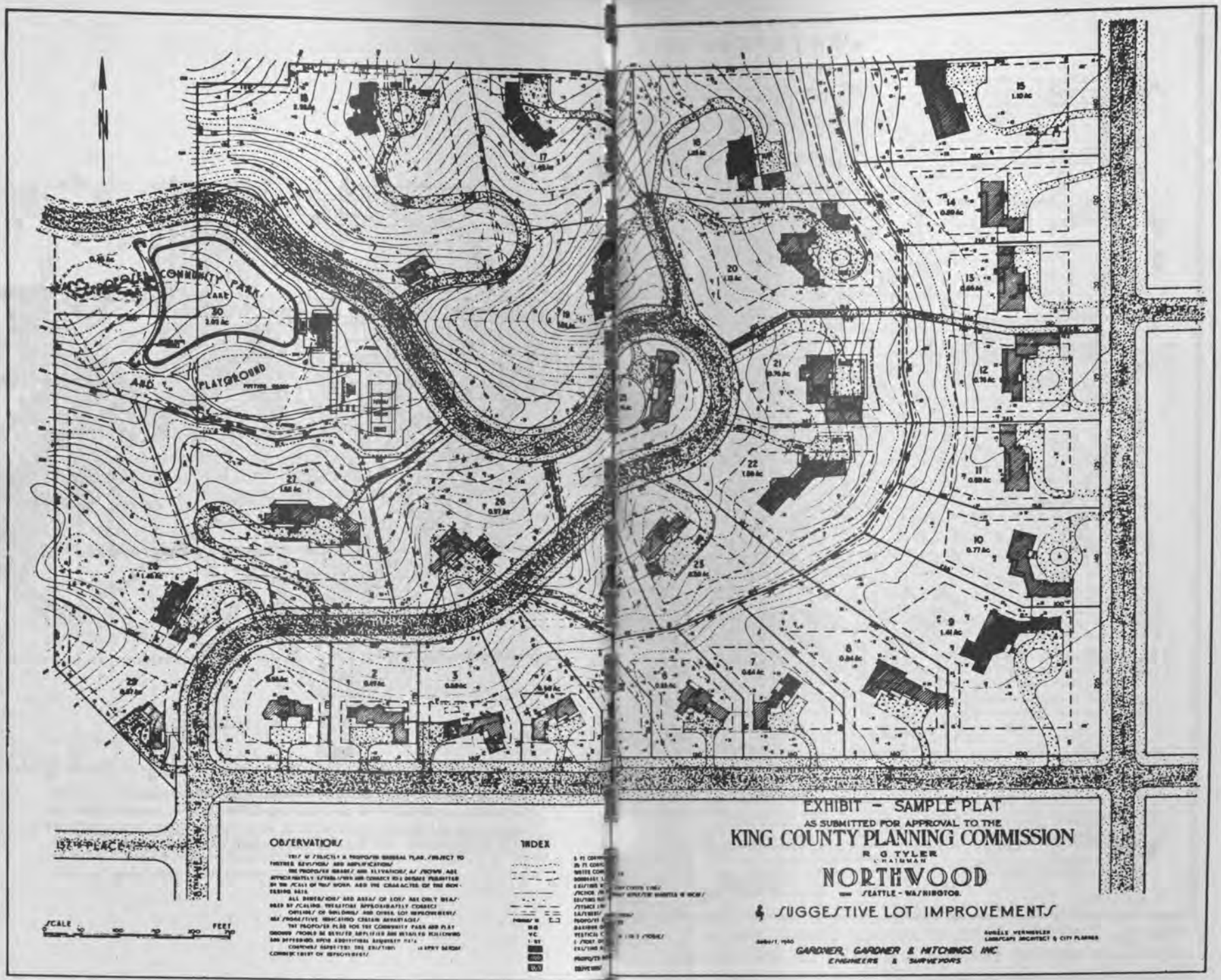

Fig. 5. COMPLETE LAND PLAT

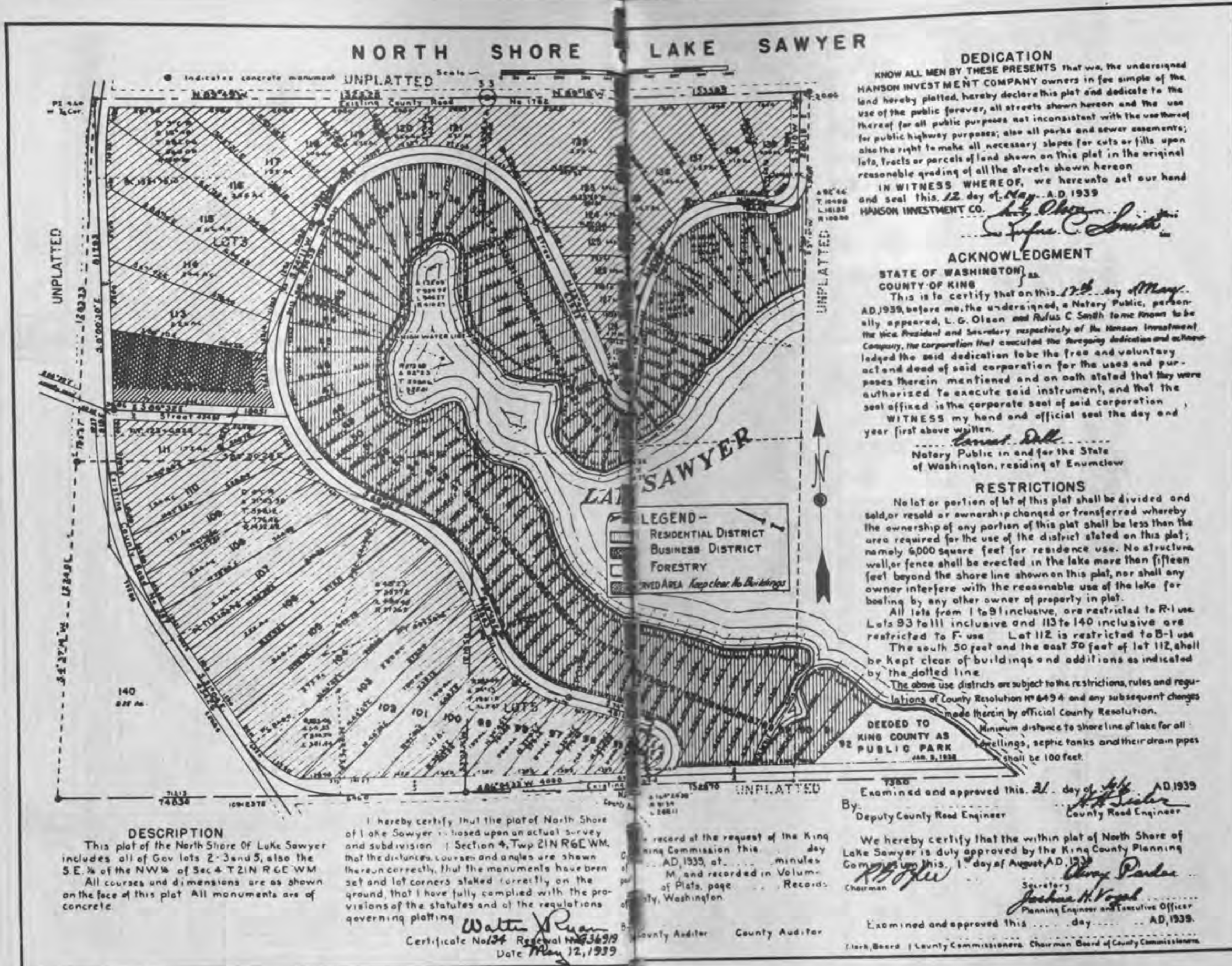

Fig. 6. COMPLETE PLAT. Property staked out on shoreline can be located and lake is definitely dedicated to public use. If water vanishes, land under water becomes public recreation area.

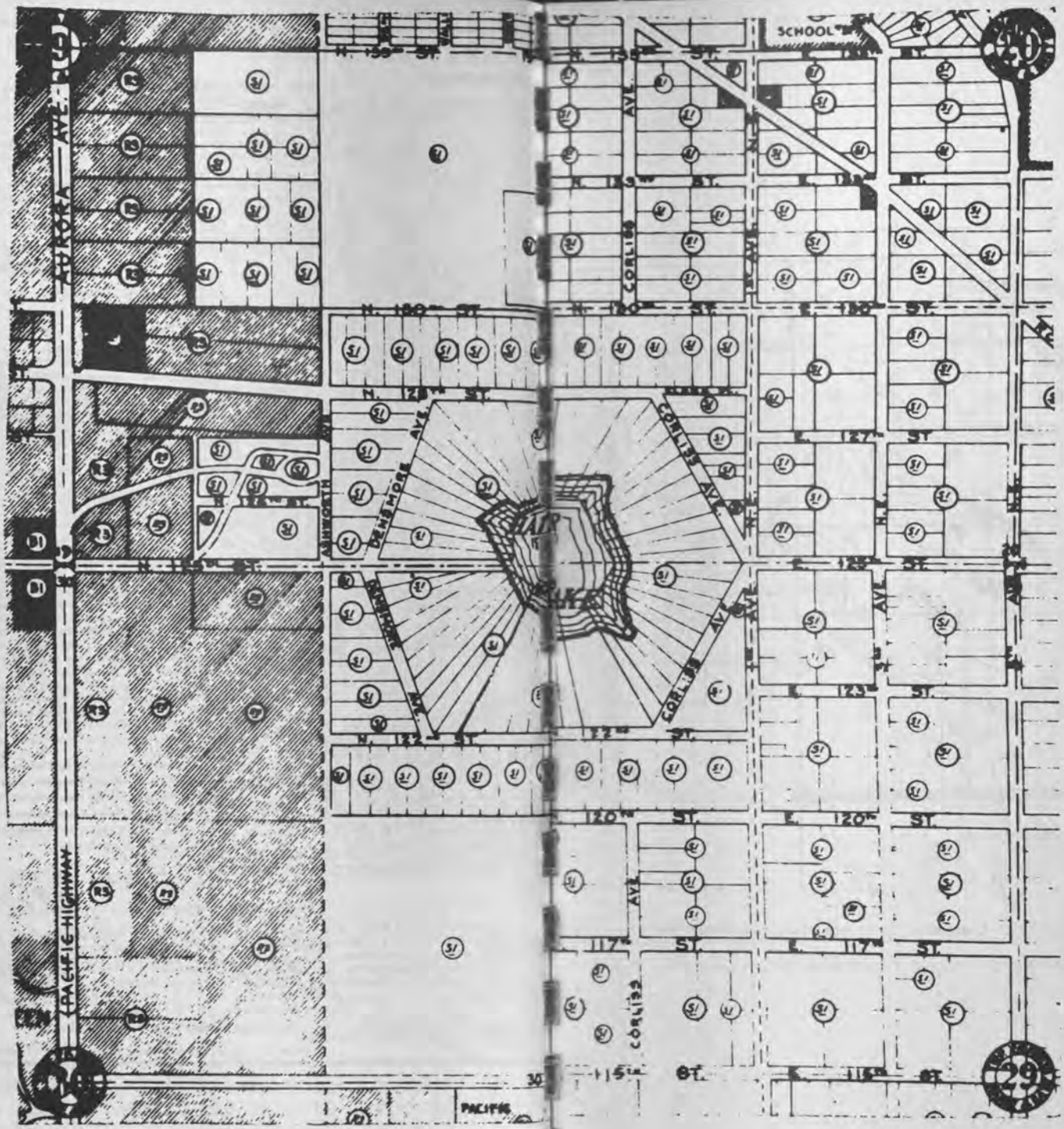

Fig. 7. HALLER LAKE. Lots located but use of street ends and lake indefinite. Ownership of land under lake assumed to be public but is in considerable doubt. Dedication of street ends extend into lake indefinitely.

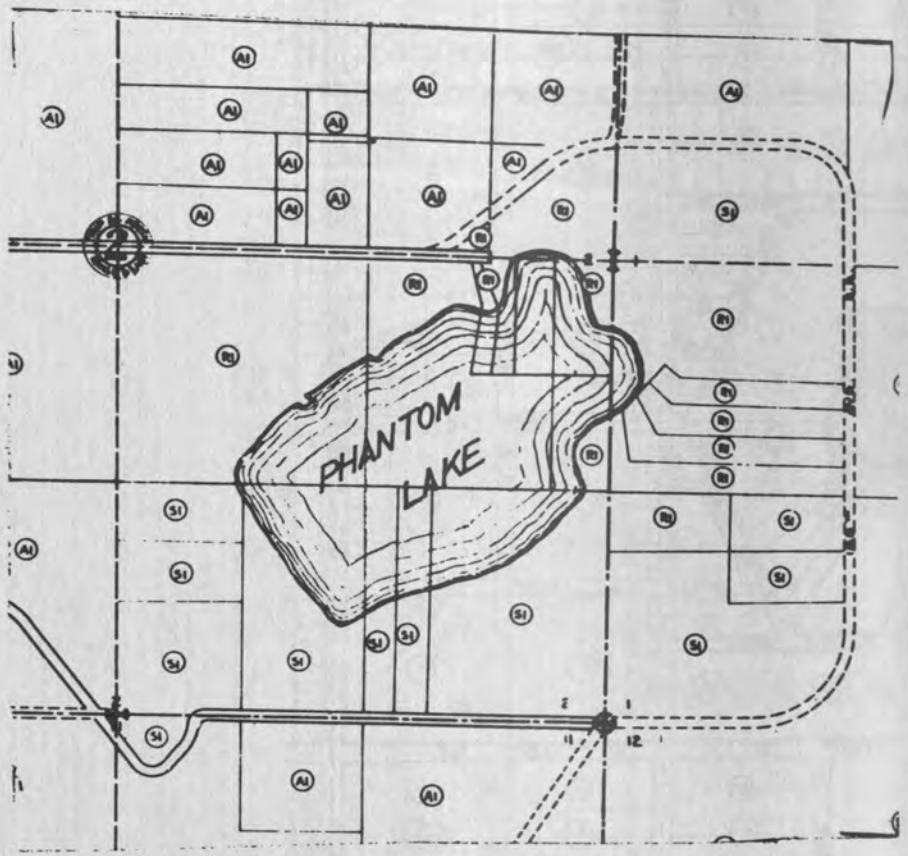

Fig. 8. PHANTOM LAKE. Owners' lots all shown across water.

Fig. 9. INNER-OUTER HARBOR LINE OF JUANITA BAY.

recorded by a simple lot-and-block or tract number, saving the public and the county assessors and auditors thousands of dollars in recording expenses, and eliminating the errors which have occurred over many years in carrying forward lengthy and inaccurate descriptions of property boundaries.

VI. PROBLEMS PERTAINING TO THE LOCATION OF TRACTS OF LAND IN RELATIONSHIP TO WATER

A. Introduction

Many questions have arisen in connection with surveys, such as locations of boundaries between private and public ownerships, and overlapping of private and public use. Many disputes have arisen over the location not only of boundaries of land but also over water boundaries. The judicial decisions in which many of these disputes have been resolved have established precedents with which a surveyor must be familiar not only in preparing testimony for court, but also in order to appreciate the conditions and evidence that the surveyor must find or ascertain in the field and put in the record in court to support a survey. While the legal questions are the attorney's responsibility, they are also of concern to a surveyor when they involve his work.

> "The importance of our shore lands is rapidly increasing. Values in most of our coastal states have reached levels which demand accurate knowledge of the area involved in any conveyance. The riparian rights which accrue to the owner of the adjacent upland constitute an important factor in such values. There is a rapidly growing public interest in the proprietorship in the ripa which is inherent in the sovereignty of the people. On the Atlantic and Gulf coasts at least ten states have formally created agencies to administer some or all aspects of this sovereignty. Six of these ten agencies have been created or charged with this function within the past four or five years. As to the Pacific Coast, the extent to which California is interesting herself in the subject is nationally known.
>
> "Everywhere there seems to be uncertainty and obscurity as to the specific applications of the principles embodied in the law and the court decisions to the sites to which those principles must be applied. The need for a clarification of the whole subject is plainly indicated. That clarification can come only from a meeting of the legal and engineering minds.
>
> . . . . . .

> "I doubt whether there exists on any part of our coasts a natural basin; that is, one unimproved by man; where a contour derived from the elevation of mean high tide in the adjacent ocean and carried at that elevation around the basin by spirit levels would not depart more or less from the position of the true mean high tide line of the basin. In short, in the basins the plane of mean high water is usually a tilted or warped surface, or a combination of both."[19]

The people of the State of Washington are fortunate in having an unusually large amount of tide and shore lands on sea, lakes, streams, and bays. As land values increase with the growing population, it is necessary to avoid the costly lawsuits such as are still pending affecting land ownerships on the east coast of the United States.

The need for proper legislation with respect to water boundaries and proper land surveying and mapping of lands lying along tide waters and shore lands needs to be emphasized. To date, along many of the tide and shore lands of the State of Washington, neither an inner nor an outer harbor line or even a line of navigation has been established.

In connection with the subdivision of property adjacent to land covered with water, the plat survey and the plat restrictions have been found most beneficial as an aid to avoiding future controversies. A great deal of litigation has been caused by the lack of proper plat restrictions and by improper surveys.

Engineers and owners should endeavor to foresee some of these difficulties and profit by past experience. It is possible to settle in advance some questions before there is a sale of the land to many diverse owners, including the exact boundaries of the shore lands lying along the stream or lake, thereby preventing misunderstandings as to location and rights of ownerships of the land and the adjacent waters, and eliminating confusion and bitter disputes as to the right of use and kind of use of the body of water. It is the water which gives much of the value to the tracts of land adjacent thereto.

For example, two different parties own waterfront on Puget Sound; one has a deed to the tide lands as well as to his uplands. Where are his shore lands located? Where is the boundary line on the water side? The other owner has a deed to water front property, but someone else owns the shore lands. Where are

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19. Rear Admiral R. S. Patton, Relation of the Tide to Property Boundaries, (Washington D.C.: Department of Commerce, U.S. Coast and Geodetic Survey, 1940), 2, 11-12. This is a very informative fourteen page document by a former director of the United States Coast and Geodetic Survey.

these shore lands situated? If the water level is lowered, do the shore lands move seaward?

Another example: The lands around a privately owned lake are subdivided into water front lots with a right of way serving these lots on the landward side of same. The plat applicable thereto also has one or two, sixty foot wide rights of way leading to the lake. These rights of way on the plat are dedicated to the people. Apparently the lot lines stop on the shore of the lake, and the lake presumably is to be of common use to the lot owners. What rights to the area covered by lake water has each lot owner since he has access to the lake? How far can he commercialize his rights of access and the common usage of the lake waters, letting outsiders cross his land to the lake? What rights can the public ask and have because of their access over the sixty foot right of way to the lake? What happens if the lake is lowered or dried up?

The plat survey should be explicit in these matters of lot and water boundaries. The plat restrictions should be explicit as to common water usage. Restrictions may permit hand-powered water craft only if so desired, and prohibit the making of the lake into a log pond or any commercialized public use, and prevent the use of private power boats.

Prospective buyers of lots should know what they are purchasing both with respect to the land as well as the rights of use of the water surface of the lake, since the lake must be used in common to some degree to be of value. Whether the land, lying along the watered area, is part of a recorded plat or is still part of an unincorporated unplatted area should be ascertained by the buyer; in any case in which indefinite factors exist, these questions are difficult to settle. It is necessary to be familiar with the rules set forth in judicial decisions in attempting to settle disputes and to resolve uncertainties of the past.

A discussion of the difficulties involved and conditions arising as to the use of water adjacent to land, with examples, will illustrate fully and convince everyone that the only final solution to these questions if court action is to be obviated, is the establishment of surveys and mapping by the proper agency of the city, the county, the state, or the Federal Government, of all beds of lakes, and streams, and all first and second-class shore lands, and all inner and outer harbor lines. These surveys and location of monuments upon the site will make unnecessary the constant argument that now arises regarding where the mean values of tidal planes, high water line, high tide line line of ordinary high water, and similar references to the opposite or low stage of the tide line. These terms are indefinite, ambiguous, and not readily subject to definition by the courts. Surveys, monuments, maps, and adoption thereof by duly constituted authorities and recording of same will establish these

water boundaries as physical factors specifically in place, with adjustments to warped surfaces and other problems reconciled.

In considering the relationship of tide to property boundaries, it has been observed that:

"The grants, charters and conveyances which constitute the first links in the chains of title on which are based the present ownerships of lands along our seacoasts contain frequent reference to such boundaries as the high water line, the high tide line, the line of ordinary high water, etc., and similar reference to the opposite, or low stage of the tide. As a rule these references are indefinite to the point of ambiguity, primarily because of the inherently complex and variable character of the tidal phenomena, and secondarily because, at the time the early descriptions were written, either the significance of the first factor was not appreciated, or it was not considered of sufficient importance to require precise definitions of the phrases used.

"The result is that our courts are called upon from time to time for precise and workable interpretations of these vague and ambiguous phrases. The frequency with which such interpretations are necessary is strikingly evident to the Coast and Geodetic Survey, which, as the agency of the Federal Government officially charged with the study and prediction of the tides, and the generally recognized authority in this country on that subject, is called upon many times each year for tabulations of tidal data applicable to this or that matter in litigation.

. . . . . .

"The most convenient method of dealing with the relationships between the various phases of the tide is in terms of average or mean values. Thus we have mean lower low water, mean low water, mean sea level, mean tide level, mean high water, mean higher high water, etc. Each of these expressions designates a more or less accurately determined average value, of the phase designated, usually expressed in terms of its vertical relationship to one or more of the others, or to permanently marked points on shore.

"Obviously, the accuracy of determination of these mean values will depend on the length of the series of observations from which they are derived. If we start with no known relationships, a series several years in length is the minimum which gives an accuracy sufficient for present engineering purposes, and a series of

19 years will be even better, as it takes full account of the longest-period forces.

. . . . . .

"All the foregoing indicates the background of fact which must be taken into account in any adequate solution of this problem."[20]

B. Riparian Rights in the State of Washington

The recognized ownership and rights of riparian owners in the beds, banks, and shores of bodies of water, rivers, and streams by reason of their ownership of lands bordering, and abutting on, such waters is a matter of far-reaching importance. With respect to boundaries on navigable bodies of water, it is customary to describe land which lies below the high water mark in terms of tide (or shore) lands in front of, or abutting, a certain tract of land.

While the class of rights known as "water rights" must be considered herein insofar as they add to, or take away, ownership once acquired, such as alluvion, accretion, avulsion, and reliction, in considering the equitable division of such ownership and the incident rights among riparian proprietors, we shall not be concerned with "water rights" as such to any appreciable extent in this discussion.

At the outset, it is recognized that there are many varying rules in the sister states of the Union governing the ownership and rights of riparian proprietors. The applicable provisions of the constitution, statutes, and judicial decisions of the State of Washington are considered herein.

The extent of ownership of the lands comprising the beds, banks, and shores of bodies of water, rivers, and streams is governed by whether the body of water is (1) navigable or (2) nonnavigable.[21] With respect to all navigable waters in the state, up to, and including, the line of ordinary high tide in water where the tide ebbs and flows and up to, and including, the line of ordinary high water within the banks of all navigable rivers and lakes, with the exception of tide and shore lands sold by the Federal Government prior to statehood, under Article XVII, Sec. 1 of the state constitution, the State of Washington asserted its ownership to the beds and shores thereof.

Article XVII, Sec. 1 of the state constitution provides:

"The State of Washington asserts its ownership to

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20. Patton, op. cit., 1, 9 - 10.

21. John Scott Obenour, Jr., "Water Boundaries, Tide and Shore Land Rights," Washington Law Review, Vol. 23, No. 3, August, 1948, 235 - 253.

the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state." (Underscore supplied.)[22]

Two terms in this section of special significance to the land surveyor are "ordinary high tide" and "ordinary high water." In view of the large area of navigable water in the State of Washington, it is surprising that there seems to have been no definitive interpretation of these two terms by the State Supreme Court of Washington. In considering the ordinary high water mark, the United States Supreme Court has declared:

"This line is to be found by examining the bed and banks, and ascertaining where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil of the bed, a character distinct from that of the banks, in respect to vegetation, as well as in respect to the nature of the soil itself."[23]

It would seem that this definition of "ordinary high water mark" also would apply to the line of "ordinary high tide." The term "navigable waters" will be considered later.

By virtue of Article XVII, Sec. 2 of the state constitution, the State of Washington disclaimed "all title in and claim to all tide, swamp, and overflowed lands patented by the United States: Provided, the same is not impeached for fraud." The question, nevertheless, has arisen from time to time as to what were or are the boundaries of these patented lands.[24] This sec-

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22. United States v. State of Utah, 283 U.S. 64, 75, 51 S. Ct. 433, 75 L. Ed. 844 (1930). Titles to the beds of navigable rivers passed to the states upon their admission to the Union. One who acquired property bordering on a navigable river from the United States by a patent granted after statehood acquired ownership of the property to the line of ordinary high water. One who purchased from the state the shorelands of a navigable river acquired the land lying between the line of ordinary high water and the line of navigability. Harris v. Swart Mortgage Co., et. al., 41 Wn. (2d) 354, 249 P. (2d) 403 (1952).

23. Howard v. Ingersoll, 54 U.S. 381, 427, 14 L. Ed. 189, 209 (1851).

24. It is noteworthy that in Kneeland v. Korter, 40 Wash.

tion operated to leave the title of the person who had acquired patented land from the Federal Government below the high water mark before statehood in 1889 unaffected by statehood.

However, no act of the legislature of the Washington Territory granting shore or tide lands to any person, company, or any municipal or private corporation was deemed valid after statehood. In Eisenbach v. Hatfield,[25] the State Supreme Court of Washington in 1891 observed:

> "The foregoing decisions of the highest judicial tribunal of the United States, without other or further authority, would seem to settle beyond controversy, the question of title to the tide lands of this state, and to leave no doubt whatever that they belong to the state in actual propriety, and that the state has full power to dispose of the same, subject to no restrictions save those imposed upon the legislature by the constitution of the state and the constitution of the United States; and, if this be true, it necessarily follows that no individual can have any legal right whatever to claim any easement in, or to impose any servitude upon, the tide waters within the limits of the state, without the consent of the legislature."

The Court also stated:

> "And so zealous were the people of the state in guarding their rights in these lands that they inserted a proviso in the constitution to the effect that no law of the Washington Territory, granting shore or tide lands to any person, company, or any municipal or private corporation, should be deemed valid. Consti. Art. 17 [Art. 27], Sec. 2."

359, 82 Pac. 608 (1905), the Court cited with approval Cragin v. Powell, 128 U.S. 691, 9 S. Ct. 203, 32 L. Ed. 566 (1888), in which the United States Supreme Court said:

> "It is a well-settled principle that when lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions and landmarks, becomes as much a part of the grant or deed by which they are conveyed, and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself."

25. 2 Wash. 236, 244 - 245, 26 Pac. 539 (1891); Brace and Herger Mill Co. v. State, 49 Wash. 326, 95 Pac. 278 (1908).

The holding of the Court in Eisenbach v. Hatfield, supra, has been consistently adhered to by the State Supreme Court of Washington in a long line of cases.[26]

In Scurry v. Jones,[27] the Court, in construing Article XVII, Sec. 2 of the constitution of the State of Washington mentioned above, stated:

> ". . . fairly construed, we think it must be held to have, in effect, confirmed the patents which covered such lands."

In discussing the application of the word "patent" as used in Article XVII, Sec. 2 of the constitution, in Kneeland v. Korter,[28] the Court observed:

> "It has been the holding of the courts that the virtue of a patent dates from the time the patentee became entitled to it, and not merely from the date of its issuance. In the case of Stark v. Starrs, 6 Wall, 402, 18 L. Ed. 925, the United States Supreme Court, speaking by Mr. Justice Field, used the following language:
>
> 'The right to a patent once vested is treated by the government, when dealing with the public lands, as equivalent to a patent issued. When, in fact, the patent does issue, it relates back to the inception of the right of the patentee, so far as it may be necessary, to cut off intervening claimants.'"

C. Ownership of Lands within Three Mile Limit

By the Submerged Lands Act of 1953 the Federal Government released and relinquished to the states "the lands beneath navigable waters within the boundaries of the respective states and the natural resources within such lands and waters,"[29] and this act expressly provides that

> "Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and

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26. The Board of Harbor Line Commissioners v. State, 2 Wash. 530, 27 Pac. 550 (1891); Scott v. Standard Oil Company, 183 Wash. 123, 48 P. (2d) 593 (1935).

27. 4 Wash. 468, 30 Pac. 726 (1892). See also, Cogswell v. Forrest, 14 Wash. 1, 43 Pac. 1098 (1896).

28. 40 Wash. 359, 82 Pac. 608 (1905).

29. 67 Stat. 29, 30, Sec. 3 (a), 43 U.S.C.A. 1311 (a) (1956 Cum. Ann. Pocket Part).

waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power."[30]

This Act also provides:

"(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

"(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor."[31]

In State of Alabama v. State of Texas,[32] the United States Supreme Court held that, under the Submerged Lands Act of 1953 (67 Stat. 29, 43 U.S.C.A. 1301 et seq., (1956 Cum. Ann. Pocket Part), Congress has exercised its power to dispose of proprietary rights over lands beneath the navigable waters within the boundaries of the respective states, and Congress has unlimited

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30. 67 Stat. 29, 31, Sec. 3 (d), 43 U.S.C.A. 1311 (d) (1956 Cum. Ann. Pocket Part). For the complete text of the Submerged Lands Act of 1953, see pp. 164-170.

31. 67 Stat. 29, 32, Sec. 6, 43 U.S.C.A. 1314 (a) and (b) (1956 Cum. Ann. Pocket Part).

32. 347 U.S. 272, 74 S. Ct. 481, 98 L. Ed. 689 (1954). See also, Justheim et al. v. McKay, (C.C.A.), 229 F. (2d) 29 (1956); United States v. California, 332 U.S. 19, 38-39, 67 S. Ct. 1658, 91 L. Ed. 1889, 1899 (1947); and United States v. Texas, 339 U.S. 707, 70 S. Ct. 918, 94 L. Ed. 1221 (1950).

power to dispose of any kind of property belonging to the United States.

D. Harbor Lines

Another article of the Washington Constitution that affects navigable waters is Article XV. By Article XV, Sec. 1 of the state constitution the legislature was directed to provide for the appointment of a commission "to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays, and inlets of this state, wherever such navigable waters lie within or in front of the corporate limits of any city, or within one mile thereof on either side."[33] This same section of the constitution also prescribed the following restraint upon the disposition of tide lands by the state:

"The state shall never give, sell, or lease to any private person, corporation, or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high tide, and within not less than fifty feet nor more than six hundred feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its rights to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation, and commerce."

The area between the inner and outer harbor lines may be leased for the use of navigation and commerce, but that area may never be sold. The area lying beyond the outer harbor line may neither be leased nor sold. (See Fig. 10.)

The State Supreme Court of Washington has held Article XV of the state constitution applies not only to tidal waters but also to navigable rivers and lakes.

In State ex rel. Seattle v. Savidge,[34] the Court observed:

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33. RCW 43.65.040 provides that the State Board of Land Commissioners, consisting of the Commissioner of Public Lands, the Secretary of State, the State Treasurer, the Attorney General, and the State Superintendent of Public Instruction, ex officio, constitute the commission provided for in Article XV, Sec. 1 of the state constitution, but by virtue of Sec. 7, Ch. 38, Laws of 1957 the board of state land commissioners was abolished and its powers, duties, and functions were transferred to the Department of National Resources.

34. 95 Wash. 240, 246, 163 Pac. 738 (1917). See also, State v. Sturtevant, 76 Wash. 158, 135 Pac. 1035 (1913), and Puget Mill Co. v. State, 93 Wash. 128, 160 Pac. 310 (1916).

"It is as much the duty of the state authorities, defined by Art. 15 of the constitution, to provide for the location and establishment of harbor areas in inland navigable waters, if within or in front of or within one mile of the corporate limits of any city or town, as to establish the same in salt or sea water."

Article XV, Sec. 1 of the state constitution was amended by Amendment 15 in 1932 to provide that "Any harbor line so located or established may thereafter be changed, relocated, or re-established by the commission pursuant to such provision as may be made therefor by the legislature." Amendment 15 changed the references to "six hundred feet" and to "ordinary high tide" in Article XV, Sec. 1 of the constitution to "two thousand feet" and to "ordinary high water" respectively.

E. Tide and Shore Lands

In the State of Washington, the tide and shore lands have been classified by statute as first and second class tide lands and first and second class shore lands as follows:

"'FIRST CLASS TIDE-LANDS.' Whenever used in this title the term 'first class tide-lands' means the beds and shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line, and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.[35]

"'SECOND CLASS TIDE-LANDS.' Whenever used in this title the term 'second class tide-lands' means public lands belonging to the state over which the tide ebbs and flows outside of and more than two miles from the corporate limits of any city, from the line of ordinary high tide to the line of extreme low tide.[36]

"'FIRST CLASS SHORE LANDS.' Whenever used in this title the term 'first class shore lands' means public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability and within or in front of the corporate limits of any city or within two miles thereof upon either side.[37]

35. RCW 79.04.050.
36. RCW 79.04.060.
37. RCW 79.04.070.

"'SECOND CLASS SHORE LANDS.' Whenever used in this title the term 'second class shore lands' means public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability and more than two miles from the corporate limits of any city."[38]

Since deeds often describe land in terms of "first class shore lands abutting Lot 3, Sec. 32," it is necessary that the surveyor be familiar with the statutory definition of tide lands and shore lands.

The term "ordinary high tide" has been defined above earlier. The term "extreme low tide" used in defining first and second class tide lands, however, requires definition. In State v.

38. RCW 79.04.080. An application for purchase from the state of first and second class tide and shore lands must be accompanied by a plat of the surveys of the land applied for; such tide and shore lands may be sold only after they have been surveyed and platted. However, unplatted first class tide or shore lands may be leased to the owner of the abutting land for general purposes. When an easement is desired over state lands, the application therefor to the Commissioner of Public Lands must be accompanied by a regulation plat made by a registered professional engineer or land surveyor in accordance with the rules shown on the application blank and sample plat, which may be obtained from the Commissioner of Public Lands.

An applicant for detached tide and shore lands must, at his own expense, survey and file with his application therefor a plat of the tract covered thereby; such survey is required to be connected with, and the plat to show, two or more connections with the United States survey of the uplands; the plat must be prepared on mounted paper, size 24"x 36" containing an area table and a certificate of the engineer making the survey. The field notes of the survey must also accompany the application. Plats must be signed and sealed by a registered professional engineer or land surveyor.

By statute (RCW 79.16.330), the measurement of the length of second class tidelands is in lineal chains along the meander line. The fact that the statute requires this measurement to be made along the meander line does not establish that line as a boundary between second class tidelands and adjacent lands. The boundary lines of second class tidelands are, by statute, the line of extreme low tide and the line of ordinary high tide. (RCW 79.04.060). All area landward of the line of ordinary high tide is uplands. Harkins v. Pozzi et al., 150 Wash. Dec. 214 (1957).

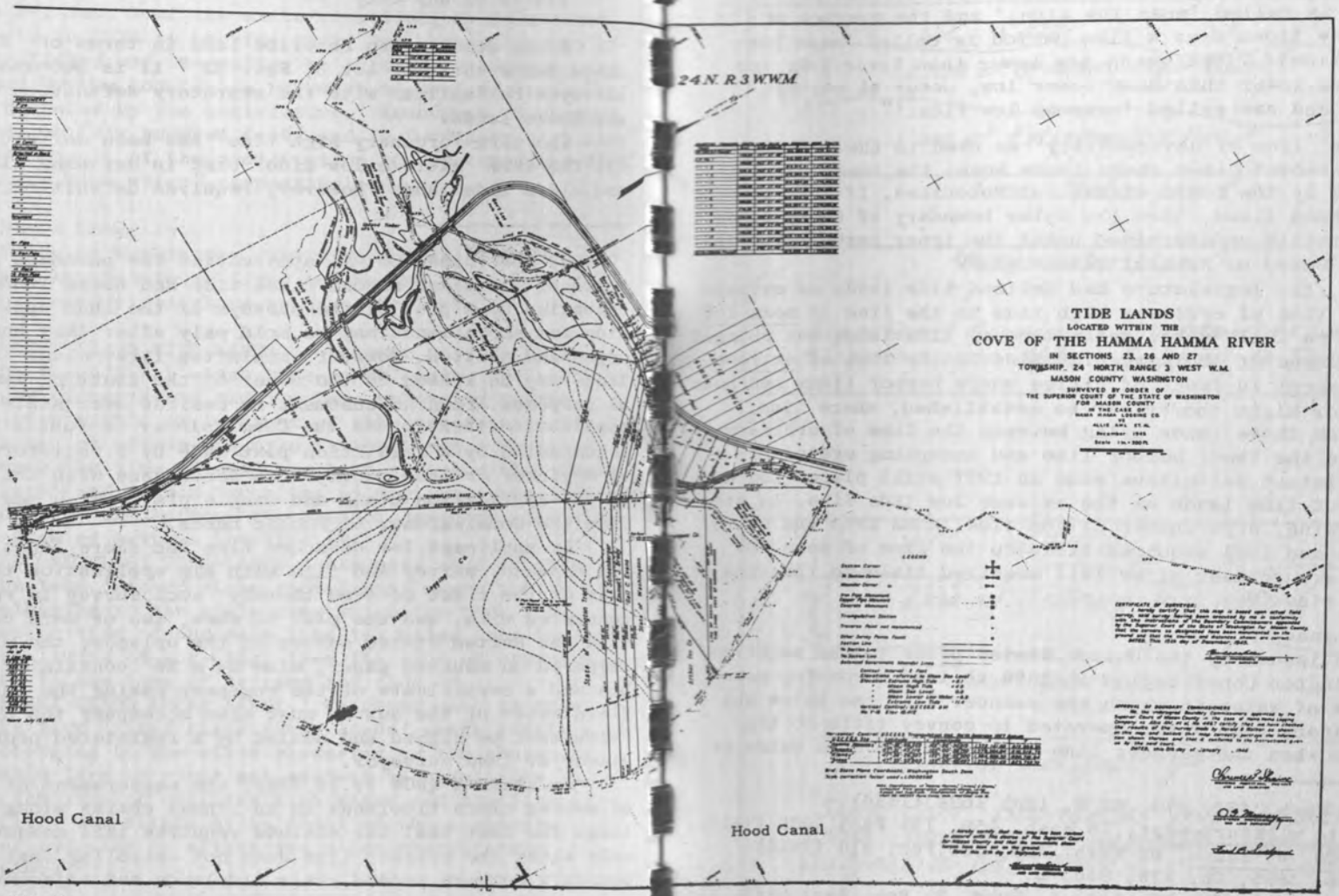
24 N. R 3 W W.M.
TIDE LANDS
LOCATED WITHIN THE
COVE OF THE HAMMA HAMMA RIVER
IN SECTIONS 23, 26 AND 27
TOWNSHIP 24 NORTH, RANGE 3 WEST W.M.
MASON COUNTY WASHINGTON
SURVEYED BY ORDER OF
THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR MASON COUNTY
IN THE CASE OF
HAMMA HAMMA LOGGING CO.
vs.
ALLIS APL. ET AL
December 1945
Scale 1in.=200ft.
LEGEND
CERTIFICATE OF SURVEYOR:
APPROVAL OF BOUNDARY COMMISSIONERS
Hood Canal
Hood Canal

Fig. 10.

Edwards,[39] the State Supreme Court of Washington defined "extreme low tide" as follows:

> "There are two low tides each day called the short run out and the long run out. The lower of these daily tides is called 'lower low tide.' The average of all low tides, both low and lower low, over a fixed period of time is called 'mean low tide,' and the average of lower low tides over a like period is called 'mean lower low tide.' Tides which are lower than lower low, and therefore lower than mean lower low, occur at certain seasons and are called 'extreme low tide.'"

The term "line of navigability" as used in the definition of first and second class shore lands means the inner harbor line as fixed by the Board of Natural Resources. If that line has not yet been fixed, then the outer boundary of shore lands will simply remain undetermined until the inner harbor line is fixed by the Board of Natural Resources.[40]

In 1895, the legislature had defined tide lands as extending from the line of ordinary high tide to the line of mean low tide.[41] Then in 1911,[42] the definition of tide lands was changed to "from the line of ordinary high tide to the line of extreme low tide," except in front of cities where harbor lines had been established or might thereafter be established, where tide lands shall be those lands lying between the line of ordinary high tide and the inner harbor line and excepting oyster reserves. The latest definition made in 1927 still places the outer boundary of tide lands at the extreme low tide line. In view of the foregoing, a purchaser of the tide lands from the state between 1895 and 1911 acquired title to the line of mean low tide, while a purchaser after 1911 acquired title to the line of extreme low tide.[43]

F. Meander Lines

Patents issued by the United States prior to the adoption of the Washington Constitution in 1889 to land bordering meandered bodies of water in which the meander line ran below the line of ordinary high water operated to convey title to the meander line when the meander line lay below the high water or

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39. 188 Wash. 467, 470, 62 P. (2d) 1094 (1936).

40. State v. Sturtevant, 76 Wash. 158, 135 Pac. 1035 (1913); Puget Mill Co. v. State, 93 Wash. 128, 160 Pac. 310 (1916).

41. Laws, 1895, Ch. 178, Sec. 2.

42. Laws, 1911, Ch. 36, Sec. 1, Subd. 2; Rem. Rev. Stat. Sec. 7833.

43. RCW 79.04.050 and 79.04.060. For significant illustrations of tide lines, harbor lines, and other water lines, see Figures 11 and 12, infra.

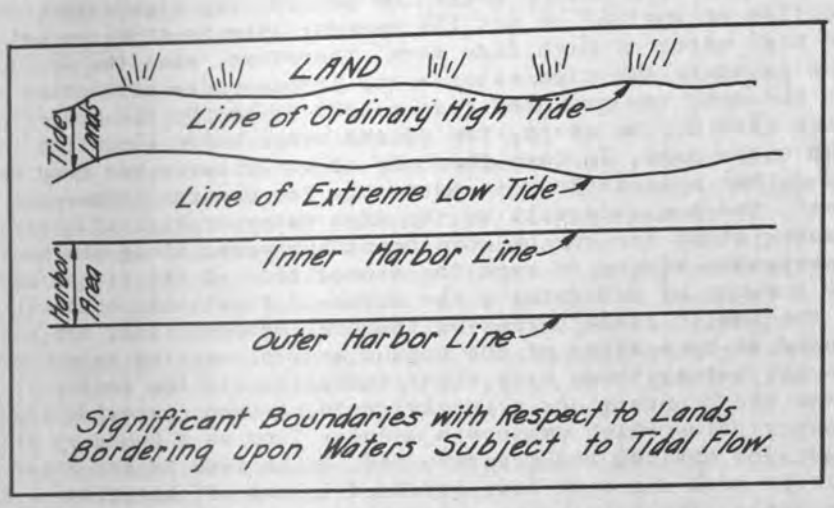

Fig. 11.

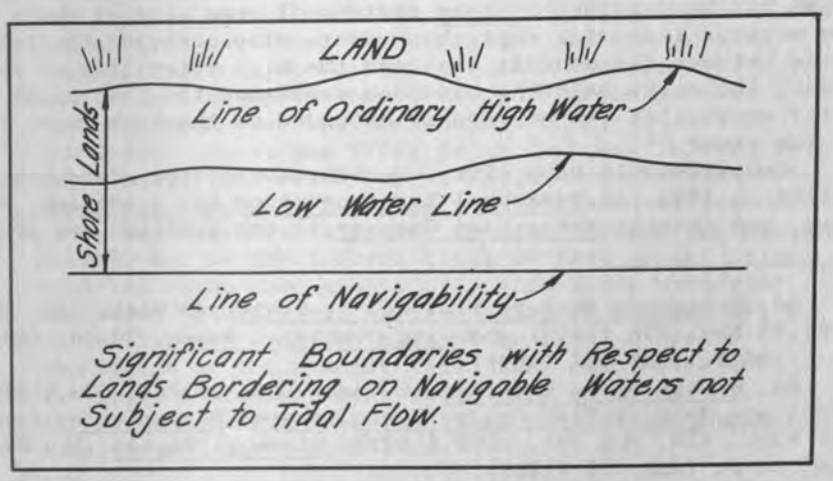

Fig. 12.

high tide line.[44] If the abutting upland was patented before statehood, that is, before November 11, 1889, the upland ownership extends to whichever line is farther out, the line of ordinary high water or the government meander line. With respect to upland sold by the state after statehood, the boundary would be the line of ordinary high tide or ordinary high water, irrespective of whether or not the meander line is above or below the high water or high tide mark. Therefore, when the meander line is above the high water mark, irrespective of whether or not the deed was executed before 1889 by the United States or after 1889 by the state, the upland owner holds the title to the high water mark. In case the body of water never has been meandered, but nevertheless is navigable for general commercial purposes, the boundary will be the high water or high tide mark.[45] Meander lines are run by government surveyors along the banks of a navigable stream to mark the sinuosities of the stream and for the purpose of determining the areas of fractional subdivisions of the public lands bordering thereon. Meander lines are not intended as boundaries of the upland tracts, and the watercourse itself, unless there is a clear indication to the contrary, forms the boundary. As a general rule, a deed conveying land by a description which employs a meander line as a boundary will be construed against the grantor, and, if he owns to the water, he will be deemed not to have intended to cut off his grantee from the water, the rule being subject to the qualification that if the parties to the deed appear to have intended that the meander line should be the actual boundary, then such intention will be given effect. On an issue as to whether a deed conveying land (that had been patented after statehood), one side of which was the meander line of a navigable river, also conveyed the land lying between the meander line and the high water line of the river, the court held the evidence sustained the finding of the trial court that the conveyance extended to the high water line of the river.[46]

Comparatively soon after the adoption of the state constitution in 1902, in Washougal Transportation Co. v. Dalles, Portland, and Astoria Navigation Company,[47] the question was pre-

44. Brace and Hergert Mill Co. v. State, 49 Wash. 326, 331 - 332, 95 Pac. 278 (1908) and King County v. Hagen, 30 Wn. (2d) 847, 194 P. (2d) 357 (1948).

45. Eisenbach v. Hatfield, 2 Wash. 236, 26 Pac. 539 (1891); Brace and Hergert Mill Co. v. State, supra; Harper v. Holston, 119 Wash. 436, 205 Pac. 1062 (1922); Glenn v. Wagner, 199 Wash. 160, 90 P. (2d) 734 (1939).

46. See Harris v. Swart Mortgage Co. et al., 41 Wn. (2d) 354, 249 P. (2d) 403 (1952).

47. 27 Wash. 490, 497 - 498, 68 Pac. 74 (1902).

sented for decision as to where the boundaries of government grants of public lands bordering on navigable streams were in view of the fact that the position of government meander lines was sometimes below and sometimes above the ordinary high tide on navigable waters and ordinary high water on navigable streams and lakes. The Court alluded to Scurry v. Jones,[48] and Cogswell v. Forrest,[49] and said:

> "These cases hold that the State of Washington, by the disclaimer in its constitution (Sec. 2, Art. 17) waived its right to assert title to such of the tide lands as lay above the meander line run by the government surveyors as the boundary of uplands which has been conveyed by patent from the government of the United States prior to the admission of the State into the Union. But however illogical it may seemingly be to hold that the meander line marks the boundary of a government grant when it runs below the line of ordinary high-water mark, but does not so mark it when it runs above that line, it is plain that the distinction rests upon widely differing principles."

After quoting the disclaimer section of Art. 17, Sec. 2 of the constitution, the Court continued:

> ". . . and the court could very properly hold that its effect was to vest title in the upland owner of all tide lands lying within the meander lines described in the calls of his patent. But the upland boundary of tide and shore lands is the line of ordinary high-water mark. Above that line the state's title does not extend, no matter where the government meander line may have been run; and the state cannot, by deed or otherwise, convey any title to or interest in such land by reason of its ownership of the tide and shore lands bordering thereon. The primary disposition of the soil is vested exclusively in the Congress of the United States. And as the federal court of last resort holds that the authorized grants of public lands bordering upon a navigable river made by congress conveys title to the line of ordinary high-water mark of such river, regardless of the meander line, this court must hold the line of ordinary high-water mark to be the boundary of such grants in all instances where the meander line was run above such line."

48. 4 Wash. 468, 30 Pac. 726 (1892).

49. 14 Wash. 1, 43 Pac. 1098 (1896).

In Harper v. Holston,[50] in laying down the applicable rules of law with respect to meander lines, the Court declared:

> "Meander lines run in surveying fractional portions of the public lands bordering upon streams, whether navigable or unnavigable, are run not as boundaries of the tract, but are run for the purpose of defining the sinuosities of the banks of the streams and as a means of ascertaining the quantity of land in the fractions; that the stream itself is the actual boundary in all cases; the part of the stream which forms the boundary differing in the different states according to the local law; that the local law of this state recognizes the line of ordinary high water as the boundary line on all navigable streams, and the thread of the stream as the boundary on all streams that are unnavigable."

In discussing the purpose of meander lines, in Rue v. Oregon and Washington Railroad Company,[51] the Court said:

> "It has, therefore, generally been held, both by Federal and state courts, that such meander lines are for the purpose of showing the border lines of the streams, but that the water courses themselves constitute the real boundaries."

The fact that a river or lake is meandered does not make it navigable. In Proctor v. Sim,[52] in considering a meandered lake, the Court stated:

> "To be navigable, a lake must be so situated and have such length and capacity as will enable it to accomodate the public generally as a means of transportation. . . . It is meandered, but all of the authorities hold that that fact does not make a river or lake navigable."

In Johnson v. Brown,[53] the Court held that lands lying between the meander line of a navigable lake and the line of ordinary high water is the property of the upland owner, the meander being only for the purpose of ascertaining the area.

G. Navigable and Nonnavigable Bodies of Water

The meaning of the term, "navigable waters" in Article XVII, Sec. 1 of the state constitution has given rise to considerable litigation, and the test of navigability which the State Supreme Court has laid down is this: To be "navigable" within the meaning of Article XVII, Sec. 1 of the state constitution, a body of water must be capable of being used to a reasonable extent in the carrying on of commerce in the usual manner by water, and be so situated and have such length and capacity as will enable it to accommodate the public generally as a means of transportation.

In Snively v. State,[54] the Court observed:

> "'Angle Lake is nonnavigable. It is not used, nor is it susceptible for use, in its natural and ordinary condition, as a highway for commerce. That a seaplane equipped with pontoons could safely land on and take off from Angle Lake, is not determinative of the question whether the lake is navigable. Such lone use of the lake would not be use of the lake in its natural and ordinary condition as a highway for commerce over which trade and travel are, or may be, conducted in the customary modes of trade and travel on water.'"

Since Angle Lake is a nonnavigable body of water, the several riparian owners along the shore of Angle Lake are the several owners of the lands contiguous to their own when extended to the thread of the lake. To the same effect, see also State ex rel. Davis v. Superior Court,[55] in which the Court recognized

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50. 119 Wash. 436, 440 - 441, 205 Pac. 1062 (1922).

51. 109 Wash. 436, 444, 186 Pac. 1074 (1920). See also, Washougal and La Camac Transportation Co. v. Dalles, 27 Wash. 490, 68 Pac. 74 (1902); Johnson v. Brown, 33 Wash. 588, 74 Pac. 677 (1903); Schmitz v. Klee, 103 Wash. 9, 173 Pac. 1026 (1918); St. Paul and Pacific Railroad Co. v. Schurmeier, 74 U.S. 272, 7 Wall. 272, 19 L. Ed. 74 (1869); and Hardin v. Jordan, 140 U.S. 371, 11 S. Ct. 838, 35 L. Ed. 428 (1891).

52. 134 Wash. 606, 611 - 612, 236 Pac. 114 (1925). See also, Griffith v. Holman, 23 Wash. 347, 63 Pac. 239 (1900); Snively v. State, 167 Wash. 385, 388, 9 P. (2d) 773 (1932) in which the Court observed that "The fact that Angle Lake is meandered does not make that body of water navigable."

53. 33 Wash. 588, 74 Pac. 677 (1903). See also, Nassa v. Seaborg, 64 Wash. 164, 116 Pac. 658 (1911).

54. 167 Wash. 385, 389, 9 P. (2d) 773 (1932). See also, Lefevre v. Washington Monument and Cut Stone Co., 195 Wash. 537, 81 P. (2d) 819 (1938); Bernat v. Morrison, 81 Wash. 538, 143 Pac. 104 (1914); Proctor v. Sim, 134 Wash. 606, 236 Pac. 114 (1925); and Strand v. State, 16 Wn. (2d) 107, 125, 132 P. (2d) 1101 (1943).

55. 84 Wash. 252, 146 Pac. 609 (1915). In New Whatcom v. Fairhaven Land Co., 24 Wash. 493, 502, 64 Pac. 735 (1901), in

that even though the riparian owners along the shore of a nonnavigable body of water own land to the thread of the body of water, it may be navigable for special purposes, with the owner entitled to claim the underlying ground. The Court quoted with approval from Watkins et al. v. Dorris et al.,[56] as follows:

> "The title to the bed of the stream, therefore, passed from the government to the land owner, but it is subject to the right of the public to use for floating logs and timber."

With respect to the boating, swimming, fishing, and other similar rights of riparian proprietors upon a nonnavigable lake (such as Angle Lake), these rights or privileges are owned in common, and any proprietor or his licensee may use the entire surface of a lake so long as he does not unreasonably interfere with the exercise of similar rights by the other owners. This rule does not have the effect of making the nonnavigable lake public, since a stranger has no right to enter upon the lake without the permission of an abutting owner.

Although the owners of property abutting upon a nonnavigable lake own the bed of the lake, where its contour is uneven, a formula would have to be devised to apportion the lake bed ratably among the owners before the boundaries of the portion belonging to each owner could be set.[57]

In considering the ownership and control of the beds and banks of navigable and nonnavigable waters, particular attention must be given to the statutes and judicial decisions under which the logging and timber industry is accorded certain rights; the state is accorded absolute control over navigable waters; and the control of riparian owners over nonnavigable waters is limited. By reason of the importance of the logging and timber industry in the State of Washington and convenience and necessity

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which an attempt was made to appropriate for domestic purposes the water of a nonnavigable stream, thus depriving the landowner operating a mill with water coming from the lake's only outlet, the Court observed:

> "'The right to the use of water flowing over land is identified with the realty, and is a real and corporeal hereditament. . . . And this right is a substantial one, and may be the subject of sale or lease like the land itself.'"

For an annotation re title to land covered by tidal or other navigable waters, see 53 American State Reports 289.

56. 24 Wash. 636, 64 Pac. 840 (1891)

57. Snively et al. v. Jaber, 48 Wn. (2d) 815, 296 P. (2d) 1015 (1956).

because of the environment of the industry, state laws have enlarged the rights of those engaged in this industry, and thereby have affected the rights of the riparian owners.

RCW 76.28.090, which was enacted in 1890, provides:

> "All meandered rivers, meandered sloughs, and navigable waters in this state are public highways and boom corporations are public corporations for the purposes of this chapter. The improvement of such streams, sloughs, and waters shall be deemed and declared a public use and benefit."

Corporations created, either in whole or in part, for clearing out and improving rivers and streams in the State of Washington, and for the purpose of catching, booming, sorting, rafting, and holding logs, lumber, or other timber products are required within ninety days after their articles of incorporation have been filed, to file in the office of the secretary of state a plat or survey of so much of the shore lines of the waters of the state or of any of the rivers or streams thereof and lands contiguous thereto as the corporation intends to utilize for logging. Such plat is required to be made from the records of the United States in the Surveyor General's office in the State of Washington, or by a competent surveyor, subsequent to the actual survey. Whenever such a corporation desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in the original plat, or in any manner to change, modify, or correct its original plat, it may file additional plats or surveys in the office of the Secretary of State of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for logging by the corporation. In addition, whenever by reason of floods or otherwise, the channel of any stream is changed so as to put such stream beyond the limits of the original plat or any supplemental plat that has been filed pursuant to either RCW 76.28.020 or RCW 76.32.030, the corporation may file in the office of the Secretary of State supplemental plats or surveys showing the change in the channel and so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for logging.[58]

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58. RCW 76.32.010 - 76.32.030 et seq., as amended. Unplatted first class tide or shore lands may be leased for booming purposes. Second class tide or shore lands whether or not reserved from sale or from lease for other purposes, except any oyster reserves containing oysters in merchantable quantities, may be leased for booming purposes.

In Watkins v. Dorris,[59] the Court, in considering RCW 76.28.090 supra, held the term "navigable waters" in Article XVII, Sec. 1 of the state constitution does not embrace a stream which is only navigable for the purpose of floating logs, and therefore title to the bed of such a stream is in the owner of the adjoining uplands, and stated:

> "Under this section all 'meandered rivers and meandered sloughs' shall be deemed as public highways for the purposes specified in the act, viz; booming and floating logs and timber. Nothing further is needed to establish them as such public highways, when it is shown that they are meandered. The section further provides that all 'navigable waters' shall be deemed as public highways for the same purpose. If the stream is not meandered, it must then be determined whether it is or is not navigable in fact for floating logs or timber. If navigable for such purpose, it is a public highway for that purpose."

Thus, whether the stream or body of water is or is not meandered, if it is navigable for general commercial purposes, the bed belongs to the State and the public. However, whether the stream or body of water is or is not meandered, if it is non-navigable for general commercial purposes, the title to the thread of the stream is in the riparian owners provided the description in the deed of the abutting upland owner does not limit his boundary "to the bank" of the stream, but is "subject to the right of the public to use the stream for floating logs and timber." Although the right to use streams for floating logs and timber was only expressly conferred upon corporations by statute, the Court stated that "With this right given to a corporation to use the stream as a public highway, there is no reason, in principle, why an individual or partnership . . . may not use it as such. Indeed, if a corporation only could so use the stream, the act would be of doubtful force, because of its discrimination. . . . But neither such corporation nor individuals can interfere with the soil in a stream of the character of Elochoman Creek, the bed of which is owned by the land owner, without the land owner's consent, or, by operation of law, with due compensation made."

In East Hoquiam Boom and Logging Co. v. Neeson,[60] the Court, in considering Chapter 72, Laws, 1895, Ch. 76.32 RCW, as amended,

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59. 24 Wash. 636, 644 - 645, 64 Pac. 840 (1901).

60. 20 Wash. 142, 146-147, 54 Pac. 1001 (1898). See also, Sumner Lumber and Shingle Co. v. Pacific Coast Power Co., 72 Wash. 631, 131 Pac. 220 (1913).

with respect to a stream that was not navigable for any purpose in its natural state, declared:

> "It is well settled that a stream which can only be made navigable or floatable by artificial means is not a public highway."[61]

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61. Cf., however, the definition of "navigable waters" of the Federal Water Power Act under which bodies of water that may be made navigable by artificial means are treated as navigable for the purpose of regulation of commerce by the Federal Government. Title 16, U.S.C.A. Sec. 796 (8) of the Federal Water Power Act contains a rather broad definition of "navigable waters"; it provides:

> "'Navigable waters' means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among several states, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority." (Underscore supplied.)

In U.S. v. Appalachian Electric Power Co., 311 U.S. 377, 407, 61 S. Ct. 291, 85 L. Ed. 243 (1940), the United States Supreme Court observed:

> "A waterway, otherwise suitable for navigation, is not barred from that classification merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken. . . . Nor is it necessary that the improvements should actually be completed or even authorized. . . . Although navigability to fix ownership of the river bed . . . is determined . . . as of the formation of the Union in the original states or the admission to statehood of those formed later, navigability, for the purpose of regulation of commerce may later arise."

Thus, in this case, even though the river was not in fact navigable, the fact that it could have been made navigable by the construction of proper facilities, made the river navigable for the purpose of regulation of commerce thereon by the Federal Gov-

and the Court continued:

> "If there is a principle . . . more firmly settled in the law than any other, it is that, in the absence of congressional interference with, or control of, the subject, the state possesses the undoubted right to promote by artificial means, the navigability or floatability of rivers and streams within its borders, and thereby render them more useful and beneficial to the public."

After examining the above-mentioned 1895 act relating to booming companies, the Court stated in Burrows v. Grays Harbor Boom Company:[62]

> "From an examination of the statute, we conclude that, with the exception of the right of eminent domain and the right to charge and collect fees, the boom company stands on no different footing from an individual. That the legislature did not intend to give any exclusive right of navigation to boom companies, although they may be dealing in business of great magnitude, but that they were restricted to a joint user of the waters of the stream, and that it was the plain intention to protect from their encroachments all other rights of navigation and rights of use in the waters of the river, is evident from the enactments on the subject."

H. Thread

While, as indicated above, the boundary of land abutting nonnavigable lakes, ponds, streams, and bodies of water is the "thread" of the stream,[63] if the description of the uplands abutting upon either a nonnavigable or a navigable stream reads "to

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ernment. See also, Georgia Power Co. v. Federal Power Commission, 152 F. (2d) 908 (1946), and Economy Light and Power Power v.U.S., 256 U.S. 113, 41 S. Ct. 309, 65 L. Ed. 847, 853 (1921).

62. 44 Wash. 630, 644, 87 Pac. 937 (1906). See also, Monroe Mill Company v. Menzel, 35 Wash. 487, 77 Pac. 813 (1904); State ex rel. United Tanners Timber Co. v. Superior Court, 60 Wash. 193, 110 Pac. 1017 (1910); Robinson v. Silver Lake Railway Lumber Co., 153 Wash. 261, 279 Pac. 1109 (1929).

63. Glenn v. Wagner, 199 Wash. 160, 90 P. (2d) 734 (1939); Harper v. Holston, 119 Wash. 436, 205 Pac. 1062 (1922). The term "Thalweg" means the middle or deepest, or most navigable channel, and is applied more particularly to interstate and international water boundaries. 33 C. J. 406; Johnnsson v. American Tug Boat Co. 85 Wash.212, 147 Pac. 1147 (1915).

the bank" of the stream, the description precludes title to the bed of the stream from passing to the upland owner and the boundary would be the "bank."

In Commissioners Commercial Waterway District No. 2. v. Seattle Factory Sites Co.,[64] the Court stated:

> "It may be conceded that a description in a conveyance which bounds the land conveyed by a stream, if unnavigable, will be construed as meaning the thread of the stream, but where the description is specific in its language, naming the bank of the stream as the boundary of the land conveyed, we think the decided weight of authority is to the effect that the grantees' rights will not extend beyond such specified boundary so as to give him any right in the bed of the stream."

In State ex rel. Davis v. Superior Court,[65] the Court said:

> "As to the effect of the description in the plat, the general rule appears to be, that where the description in a plat, deed, or field notes makes a nonnavigable stream a boundary, that the boundary line is the thread of the stream and not the bank, unless a contrary intention appears from the language used in the description. Where the calls in a deed or plat are to a river, naming it, 'thence along the river' to a certain point, 'thence leaving the river,' the boundary line is the center of the stream."

In the case of stationary nonnavigable bodies of water, such as lakes and ponds where there is no thread, if the body is generally circular in shape, divergent lines should be drawn from the center of the lake to each upland corner at the water's edge. If the body is oblong in shape, then a center line should be established in the body of water and the upland owners on either side take to that center line, each upland owner taking an area of the bed in proportion to his upland water frontage.[66] There are apparently no Washington decisions which involve the

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64. 76 Wash. 181, 194, 135 Pac. 1042 (1913). See also, Murphy v. Copeland, 51 Ia. 515, 1 N.W. 691 (1879); Lambeck v. Nye, 47 Ohio St. 336, 24 N.E. 686, 21 Am. St. 828, 8 L.R.A. 578 (1890); John M. Gould, A Treatise on the Law of Waters, (Callaghan and Co.: Chicago, 1900), (3rd ed.), Sec. 199, p. 384.

65. 84 Wash. 252, 256, 146 Pac. 609 (1915).

66. Frank Emerson Clark, Surveying and Boundaries, (Indianapolis: The Bobbs-Merrill Company, 1939), (2d ed.), Secs. 259, 276, and 281.

subject of title to the beds of stationary nonnavigable bodies of water.

I. Accretion

With respect to land which abuts upon a body of water, accretion is the process whereby either (a) new soil is deposited as an addition to land by gradual and imperceptible deposition through the operation of natural causes to form new solid ground, called alluvion, or (b) the bed of a body of water gradually is exposed when the water recedes from the land, called reliction (sometimes called dereliction). Under the rule of accretion, land that is gradually deposited upon one bank by the action of a stream belongs to the owner of such abutting upland. This rule is applicable to upland owners abutting both on navigable and nonnavigable streams and is recognized in the State of Washington.[67]

RCW 79.16.360 which declares that all accretions to "tide and shore lands heretofore sold or that may hereafter be sold by the state, shall belong to the state,"[68] applies only to tide and shore lands after such tide and shore lands have been sold by the state. In Ghione v. state, supra, the Court observed:

> "The statute . . . clearly shows that it does not relate to accretions in the ordinary sense of the term, that is, accretions to uplands, but on the contrary, relates to accretions to tide and shore lands, and therefore accretions, by definition, situate below the line of ordinary high tide or ordinary high water which marks the boundary between tide or shore land and the adjoining upland."

In that case a subsequent holder under a federal patent claimed land under the rule of accretion. The Court held that with respect to a navigable river which imperceptibly shifted

67. Ghione v. State, 26 Wn. (2d) 635, 650, 175 P. (2d) 955 (1946); Harper v. Holston, 119 Wash. 436, 205 Pac. 1062 (1922); Glenn v. Wagner, 199 Wash. 160, 90 P. (2d) 734 (1939); Spinning v. Pugh, 65 Wash. 490, 118 Pac. 635 (1911); and Strand v. State, 16 Wn. (2d) 107, 132 P. (2d)1011 (1943).

68. This statute, which was originally enacted in 1899 (Ch. 83, Laws, 1899) and was re-enacted in 1927 (Ch. 255, Laws, 1927), requires that state accreted land be surveyed prior to sale, and RCW 79.16.360 also provides that ". . . The owner of the adjacent tide or shore lands shall have the preference right to purchase such lands produced by accretion for thirty days after he is notified by registered mail of his preference right to purchase such accreted lands."

its bed toward the west and subsequently dried up, the owners of the uplands on the east were entitled to the accretions on the eastern bank, and the state was entitled only to the bed and shores of the river as they were situated when it ceased to be navigable.

In Glenn v. Wagner,[69] the Court stated:

> "When grants of land border on running water and the course of the stream is changed by the gradual washing away on the one side and the gradual building up on the other, the owner's boundary changes with the changing course of the stream."

In Harper v. Holston,[70] the Court quoted with approval from New Orleans v. the United States, 10 Peters 662, as follows:

> "No other rule can be applied, on just principles meaning the rule quoted above, in Glenn v. Wagner, supra. Every proprietor whose land is thus bounded, is subject to loss by the same means which may add to his territory; and as he is without remedy for his loss, in this way, he cannot be held accountable for his gains."

The Court continued:

> "The rule is as much applicable to the government as it is to private individuals. If the government chooses to grant its lands, making a running stream one of the boundaries of the grant, it must expect this part of the boundary to change as time goes on. Ordinarily it gains in one place what it loses in another, and on no principle of justice can it say that it is not to be subjected to the general rule, and such we understand to be the holding of the supreme court in Jeffries v. East Omaha Land Co., 134 U.S. 178.
> . . . . . .
> "And since the land in controversy is not within the defined boundaries of the conveyances under which they hold, it must appear, if they are to recover, that the disputed land has been added to their original boundaries by accretion."

With respect to accretion operating in favor of the state at a point at which there were no shore lands, the Court, in

69. 199 Wash. 160, 166, 90 P. (2d) 734 (1939).
70. 119 Wash. 436, 441 - 442, 205 Pac. 1062 (1922).

Washougal Transportation Co. v. Dalles, Portland, and Astoria Navigation Co.[71] held that accretion did not operate in favor of the state, and observed:

> "It cannot be that shore lands created by the erosion of the banks of a stream within the boundaries of a private claim inure to the benefit of the state; nor can the state claim, as shore lands, fills in a river caused by artificial means. . . . It could not take possession of them, or sell them to the private use of another."

J. Avulsion

When a stream which is a boundary, from any cause, suddenly abandons its old channel and creates a new one, or suddenly washes from one of its banks a considerable body of land and deposits it on the opposite bank, the boundary does not change with the changed course of the stream, but remains as it was before. This sudden and rapid change is termed in law an avulsion, and differs from an accretion in that an avulsion is violent and visible, while accretion is gradual and perceptible only after a lapse of time. In Harper v. Holston,[72] the Court stated:

> "On the other hand, it is equally the rule that, when a stream which is a boundary, from any cause, suddenly abandons its old channel and creates a new one, or suddenly washes from one of its banks a considerable body of land and deposits it on the opposite bank, the boundary does not change with changed course of the stream, but remains as it was before. This sudden and rapid change is termed in law, an avulsion, and differs from an accretion in that the one is violent and visible, while the other is gradual, and perceptible only after a lapse of time."

In George v. Pierce County,[73] the Court held that when a navigable river changed its course by avulsion over public lands before the admission of the State of Washington into the Union in 1889, the bed of the new channel remained in the Federal Government and was held in trust for the future State of Washington, and the trust title in the old channel thereupon ceased, and the State of Washington upon entering the Union acquired no title to the old channel. The Court stated:

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71. 27 Wash. 490, 499, 68 Pac. 74 (1902).
72. 119 Wash. 436, 442, 205 Pac. 1062 (1922).
73. 111 Wash. 495, 501 - 502, 191 Pac. 406 (1920).

> "There could be no reason in fact or in law, for both titles to persist for the benefit of the future state. . . . Although there are numerous authorities which hold that, if the change of channels had occurred after the state's title had become vested, then the state's title to the old channel would not have been thereby divested and we have so held in Newell v. Loeb [77 Wash. 182] and Hill v. Newell, [86 Wash. 227] supra.
>
> ". . . As the title of the government had been freed from the trust for the future state long prior to its admission, the full and unrestricted title must, therefore, have vested in the government as a part of the public domain, which it could retain or grant or permit to pass to the owner by patent of the abutting uplands under the rule as to accretions, without any further consent from the state than that contained in the constitutional provision which has been set forth."

K. Apportionment of Tide and Shore Lands When Cove Projects

While the classification of first and second-class tide lands and shore lands may appear on its face to be a simple and satisfactory method of describing the tide lands and shore lands, difficulty arises from the fact that the government surveys did not include the tide lands and shore lands. Hence there are no monuments below the high tide or high water line. Where the line of high water or high tide is substantially straight, the solution is fairly simple, and the rule is quite well established that the lines dividing the tide lands shall be run from the point of intersection of the high water or high tide line and the uplands boundary line, and at right angles to the line of high water or high tide.[74]

Unfortunately, a large portion of the tide and shore lands in the State of Washington are not bounded by straight or even substantially straight high tide or high water lines, and herein lies the principal problem with which we are confronted. In a situation such as that indicated in Fig. 13, infra, in which a well-defined cove projects in from a generally over-all straight shore line, a rule has been established which handles the situation quite satisfactorily. "Tide lands should be apportioned between the respective upland owners, so that, as the whole length of the water boundary of the land within the concave shore, cove, or bay, is to the whole length of the low water line, so is each landowner's proportion of the shore line, to each owner's share

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74. Spath v. Larsen, 20 Wn. (2d) 500, 524, 525, 148 P. (2d) 834 (1944). Cf. Kalin v. Lister, 27 Wn. (2d) 785, 180 P. (2d) 86 (1947), in which the Court stated that the line dividing tide lands should be run at right angles from the meander line.

of tide lands along the line of low water."[75] Applying this rule to the case presented by Fig. 13, in order to determine the location of the points B and C which would mark the extremities of the tidelands abutting lot 10, simply use the following proportion:

$$\frac{AXYD}{ABCD} = \frac{AX}{AB} = \frac{XY}{BC} = \frac{YD}{CD}$$

However, this rule, while seemingly definite and certain, is often difficult to apply. For example, in a case such as that presented in Fig. 14, assuming the boundary in question to be between lots 3 and 4, what are the limits of "the cove"? Is the cove limited by B or C on the left and is it limited by E or F on the right? The rule provides that all parties whose land abuts upon the "cove" shall be made parties to the boundary dispute, and it can be readily seen that the boundaries between various tideland tracts will be materially different depending upon whether C and E are selected as the limits or B and F. This is purely a question of fact which in the last analysis must be decided by the court.

L. Conclusion

From the foregoing it is evident that dividing lines between the properties of riparian owners extending into navigable or nonnavigable waters are difficult to locate without surveying and mapping, and, in some cases, will have to be resolved by litigation. There is not much confusion, however, in determining the proper location of the dividing lines between riparian owners which run under the water to the thread of a nonnavigable river or stream when the description reads to the thread of the stream.

As indicated above, where the line of high water or high tide is substantially straight, the establishment of the lines dividing the tide lands is relatively simple and the rule for the determination thereof is well-settled. However, in attempting to apply this rule to lakes, ponds, and other bodies of water where the tide and shore lands are not bounded by straight or even substantially straight high tide or high water lines, there are practical difficulties. To date, we have had a dearth of litigation in the State of Washington with respect to this problem. In Spath v. Larsen, supra, the Court laid down a general rule mentioned above dealing with this matter. Many other prob-

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75. Spath v. Larsen, supra; Seattle Factory Sites Co. v. Saulsberry, 131 Wash. 95, 229 Pac. 10 (1924); and see E.B.M., "Lateral Boundaries--Second Class Tidelands," Washington Law Review, (1945) Vol. 20, pp. 67 - 68 for discussion of several formulas that may be invoked to determine lateral boundaries of tidelands.

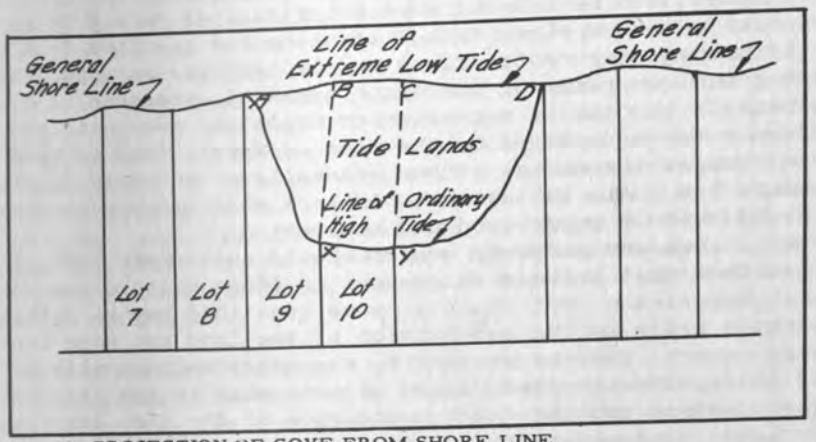

Fig. 13. PROJECTION OF COVE FROM SHORE LINE.

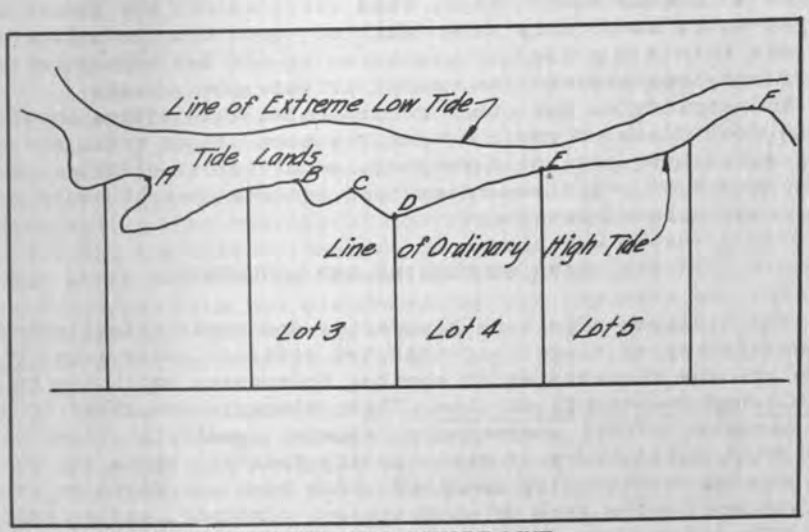

Fig. 14. PROJECTION OF COVES FROM SHORE LINE.

lems arising out of various alignments of tide and shore lands still have not been adjudicated in the State Supreme Court of Washington.

In connection with the subdivision of property situated adjacent to land covered with water, the plat survey and the plat restrictions have been found most beneficial as an aid in avoiding future controversies. Much litigation has resulted from the lack of proper plat restrictions and by improper surveys. The platting and recording of the exact areas of ownership is desirable because in case of accretion or avulsion, monuments and references may be removed by the flow of water. Then in case a stream changes its course either gradually or suddenly or the monuments are lost, the owner would know what property he owns and could have it resurveyed and monumented.

Engineers and property owners should anticipate some of the difficulties that arise with respect to these matters and profit by past experience. For example, some questions may be settled in advance prior to the subdivision of the land and sale to many diverse owners, thereby preventing misunderstandings with respect to the location and rights of ownership in the land and adjacent waters and the exact boundaries of the tide lands and shore lands, and eliminating confusion and bitter disputes concerning the right of use and kind of use of the body of water. The plat survey should be explicit with respect to upland and water boundaries. The plat restrictions should be explicit with respect to common water usage. Thus restrictions may permit hand-powered water craft only if so desired, prohibit the making of the lake into a log pond or utilizing it for any commercialized public use, and prevent the use of private power boats.

Municipalities and other governmental authorities should, within the limits of their authority, make proper rules and regulations with respect to surveying, subdivision, platting, boundaries, monuments, and recording, and enforce them to avoid confusion and misunderstanding.

VII. LAND BOUNDARIES AND MONUMENTS

The elements affecting boundaries and their establishment by surveys may be classified into two distinct categories. First, there are the elements which control boundaries which are to be established for the first time. These elements are those of policy, such as safety, convenience, expense, aesthetics, and future development. Many of these policy factors, where the public interest is sufficiently involved, have been set forth by the legislature in the form of subdivision, platting, and related laws. The process of carrying these policies into effect in the field involves the application of scientific techniques of land surveying, including the running of traverses and curves, division of given tracts into smaller tracts, computation of areas,

measurement of distances and angles, and triangulation. These techniques are outside of the scope of this publication; attention is invited to the standard texts on Land Surveying for a discussion of them.

Second, there are the elements which control the re-establishment of boundaries which were at one time established, but their location has since become uncertain.[76] When two adjacent land owners are in disagreement as to the location of the boundary line between their respective tracts, the matter may have to be resolved by the courts. Since one of the most frequent tasks undertaken by surveyors today is that of re-establishing old boundaries, it is essential that they have at least a working understanding of the rules of law to be applied. Therefore these rules, together with citations to applicable judicial decisions and statutes, have been set forth and discussed herein with special emphasis being placed on the rules applied in the State of Washington.

A. The Control of Intention

The present location of a legal boundary between two tracts of land requires the consideration of two basic questions:

1. Where was the dividing line between the two tracts when the division was first made?

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76. In Rippey v. Harrison, 66 Wash. 109, 110, 119 Pac. 178 (1911), plaintiffs brought an action to quiet title to a certain strip of land between two lots and to have the boundary line determined. Plaintiffs had constructed, and maintained for thirteen years, a fence between these two lots which they thought to be the true line, and represented it to be the true line, and accordingly the defendents purchased one of the lots with the understanding that the fence constituted the boundary line of the lot and thereafter remained in possession of the controverted strip for over ten years. The Court held that plaintiffs were "estopped from now dispossessing the innocent purchasers, even though they have proved--which they have not to our satisfaction--that the true line is as they claim it to be." The Court observed:

> "We may admit the general rule that monuments control courses and distances; but there are no original monuments discovered in this case, and the object of a survey when a line is in dispute is, not to determine where the original location ought to have been, but where it actually was; because a purchaser has a right to be protected in the land which he buys with reference to the original monuments or locations, whether they were right or wrong."

2. Have subsequent events changed the location of this original dividing line?

Assume that A owns a 10 acre tract of land, and that he wishes to sell the north 5 acres to B. A will execute a deed transferring title to the north 5 acres from A to B; this deed must contain a description of the land so conveyed. The description must refer, either expressly or impliedly, to certain monuments, which probably, although not necessarily, are in existence at the time of the execution of the deed. The intention of the grantor and grantee named in the deed with respect to the boundary line bisecting the 10 acre tract is the controlling factor in determining this boundary line.[77] This intention may be either express or implied, and may be ascertained primarily from:

1. The description in the deed, and
2. The monuments mentioned in the description which link the deed to the ground.

Hereinafter various factors affecting the location of legal boundaries in the State of Washington will be considered.

B. Re-establishment of the Boundary as of Date of the Original Division

1. The Description in the Deed or Other Instrument of Conveyance

a. The Accuracy and the Definiteness of the Description

The description in the deed or in other writings relating to the conveyance are the most commonly used sources for ascertaining the intention of the parties with respect to the original division. In the State of Washington, title to land can only be transferred by a deed containing an adequate description.[78] This immediately raises the question of what constitutes an adequate description. In Sengfelder v. Hill,[79] the State Supreme Court of Washington observed that "A description by which the property may be identified by a competent surveyor with reasonable certainty, either with or without the aid of extrinsic evidence, is sufficient." Each case must be resolved on its merits with respect to whether or not a given description satisfies the test of "reasonable certainty." While a review of the numerous cases concerning equivocal descriptions is without the scope of this study, a few relevant Washington cases to indicate certain guide

77. Cook v. Hensler, 57 Wash. 392, 107 Pac. 178 (1910).

78. RCW 64.04.010 and 64.04.030.

79. 21 Wash. 371, 380 - 381, 58 Pac. 250 (1899); Maxwell v. Maxwell, 12 Wn. (2d) 589, 593, 123 P. (2d) 335 (1942).

lines which may be employed to ferret out the intention of the vendor and the vendee should be examined.[80]

While it is generally conceded that the deed usually constitutes conclusive evidence of the land that the grantor intended to convey, in the event the deed is either ambiguous or susceptible to different constructions or if it can be established by clear, cogent, and convincing evidence that the deed does not reflect the intention of the parties, parol (oral) evidence is admissible so that a court may take into consideration the circumstances attending the transaction and the particular situation of the parties at the time the deed was executed, for the sole purpose of explaining it and of arriving at the intention of the parties which must control.[81] Before a deed will be declared void either because it does not contain such a description of the land to be conveyed as can be properly and clearly identified or because it does not contain a reference to another instrument which does include a sufficient description, all sources of inquiry which the description itself and the attendant circumstances at the time of the execution of the deed suggest, must be exhausted in a vain effort to locate the property. A deed executed in blank is void for the reason that it lacks a subject matter upon which it can operate.[82]

The description in a deed or in a contract for the conveyance of land must be sufficiently definite to comply with the statute of frauds; otherwise, recourse to oral testimony is not permitted. (The term "statute of frauds," as used herein, refers to RCW 64.04.010 which requires that every conveyance of real estate or any interest therein must be in writing.) The Supreme Court of the State of Washington has de-

80. For an extensive list of cases dealing with this subject, see Frank Emerson Clark, A Treatise on the Law of Surveying and Boundaries, (Indianapolis: The Bobbs-Merrill Company, 1922); and Ray H. Skelton, Boundaries and Adjacent Properties, (Indianapolis: The Bobbs-Merrill Company, 1930); Booten et al. v. Peterson et al., 34 Wn. (2d) 563, 209 P. (2d) 349 (1949).

81. Cook v. Hensler, 57 Wash. 392, 107 Pac. 178 (1910).

82. Sengfelder v. Hill, supra, and Barth v. Barth, 19 Wn. (2d) 543, 143 P. (2d) 542 (1943). The requisites of a valid deed are (1) that it be in writing, (2) be signed by the party bound thereby, and (3) be acknowledged by such party before some person authorized to take acknowledgments. RCW 64.04.020.

clared this standard of definiteness as follows:

> "Parol evidence may be resorted to for the purpose of applying the description contained in a writing to a definite piece of property and to ascertain its location on the ground, but never for the purpose of supplying deficiencies in a description otherwise so incomplete as not to definitely describe any land. The description must be in itself capable of application to something definite before parol testimony can be admitted to identify any property as the thing described."[83]

In numerous instances both the grantor and the grantee have had an identical intention with respect to the terms to be embodied in a written conveyance or agreement, but the writing executed by them inadvertently was materially at variance with such intention. Courts of equity will reform such writings to express the intention of both the grantor and the grantee. In a substantial number of cases, the Supreme Court of the State of Washington has approved the striking of certain words and figures and the substitution of others in order that a deed may be intelligible and to avoid having a deed describe land not owned by the grantor. For example, the court changed "southwest" to "southeast" in order to make the tract close;[84] "185.15" was changed to "185.5" in order that the deed might be consistent within itself.[85] "Wallaces's First Addition"[86] and "Plat of the City of Edmonds"[87] were substituted for "Wallace's Second Addition" and "Plat of Edmonds" since the grantors did not own land in the last two places, but did in the former two places. With respect to a description in a deed which specified the lot numbers and the name of the addition involved, but failed to indicate the block number, since these were the only lots owned by the

83. Cushing v. Monarch Timber Co., 75 Wash. 678, 686, 135 Pac. 660 (1913); Martinson v. Cruikshank, 3 Wn. (2d) 565, 101 P. (2d) 604 (1940); and Fosburgh v. Sando, 24 Wn. (2d) 586, 166 P. (2d) 850 (1946).

84. Edison v. Knox, 8 Wash. 642, 36 Pac. 698 (1894).

85. Maxwell v. Maxwell, supra, 599 - 600.

86. Thompson v. Stack, 21 Wn. (2d) 193, 150 P. (2d) 387 (1944).

87. Konnerup v. Milspaugh, 70 Wash. 415, 126 Pac. 939 (1912).

grantor in that addition, the court read the appropriate block number into the deed.[88] Parol evidence has been held to be admissible to prove that the tract of land described in a deed as "lot 6" was intended to include an unnumbered adjacent triangular, fractional lot which it was supposed was embraced in "lot 6."[89]

As a general rule, a metes and bounds description in a conveyance of real estate is controlling as against a conflicting quantity description, and the metes and bounds description is construed as if it stood alone, and the quantity description is treated as surplusage.[90]

On the other hand, in a contract for the conveyance of land, "northerly" and "approximately 207 feet" have been held to be so indefinite as to fall within the statute of frauds; recourse to oral testimony was therefore not permitted; and the contract was declared to be void.[91] The Supreme Court of the State of Washington also reached the same conclusion with respect to a contract in which the description therein referred to "160 acres, more or less" in a certain section and township.[92] The same requirements for definiteness of description have been held to be applicable to contracts by real estate brokers for their commissions.[93] These same requirements are also applicable to mortgages,[94] leases,[95] easements, and other transactions[96] relating to real property which require written descriptions. A description merely designating land as a part of a larger tract, without greater certainty as

88. Wetzler v. Nichols, 53 Wash. 285, 101 Pac. 867 (1909).

89. Newman v. Buzand, 24 Wash. 225, 64 Pac. 139 (1901).

90. Fowler et al. v. Tarbet et al., 45 Wn. (2d) 332, 274 P. (2d) 341 (1954).

91. Fosburgh v. Sando, 24 Wn. (2d) 586, 166 P.(2d)850 (1946).

92. Martinson v. Cruikshank, 3 Wn. (2d) 565, 101 P. (2d) 604 (1940).

93. Rogers v. Lippy, 99 Wash. 312, 169 Pac. 858 (1918), and Larue v. Farmers and Mechanics Bank, 102 Wash. 434, 172 Pac. 1146 (1918).

94. 36 Am. Jur. 711, Sec. 42.

95. 51 C.J.S. 818, Sec. 214.

96. An owner may be divested of his title to land through a tax foreclosure when the land is described with reasonable certainty so that a person of ordinary intelligence can, from an examination of the foreclosure proceedings, locate the property sought to be foreclosed. Centralia et al. v. Miller et al., 31 Wn. (2d) 417, 197 P. (2d) 244 (1948).

to the identity of the particular part sought to be foreclosed is not sufficient to give the court jurisdiction in a tax foreclosure proceeding. Thus, a description, "25 A. in Sec. 14 Twp. 20 Range 3, Acres 25" was held to be insufficient to confer jurisdiction upon the court in a foreclosure proceeding, and fatally defective.[97] A tax deed is favored; it initiates a new title, and the original owner cannot attack it after the expiration of the three year statute of limitations for setting aside and canceling a treasurer's deed upon sale of land for taxes even though the deed was executed under a void judgment because the court had no jurisdiction of the cause pursuant to which the judgment was entered, provided the holder of the tax deed was in possession of the realty during such three year period.[98]

b. Incorporation by Reference in Descriptions

"Incorporation by reference" of a separate writing in a deed, plat, or other instrument of conveyance relating to real property is permissible. The most common "incorporation by reference" in boundary descriptions is incorporation of officially recorded plats in which the description refers to "Lot X, Block Y, of the ABC addition to D city as filed in the E county auditor's office."

The United States Supreme Court has observed:

> "It is a well settled principle that when lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions and landmarks, becomes as much as part of the grant or deed by which they are conveyed, and controls, so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself.[99]

"Official Plats" are plats filed for record with the county auditor by private owners and the plats of the Federal Government surveys which are the basis for

97. Miller and Sons v. Daniels et al., 47 Wash. 411, 92 Pac. 268 (1907).

98. Kupka v. Reid et al., 150 Wash. Dec. 439 (1957). RCW 4.16.090.

99. Craigin v. Powell, 128 U.S. 691, 9 S. Ct. 203, 32 L. Ed. 566 - 568 (1888); and Cook v. Hensler, 57 Wash. 392, 397 - 398, 107 Pac. 178 (1910).

land descriptions in terms of government townships and sections. All such plats must be approved as required by Chapter 186, Laws, 1937, Ch. 58.16 RCW, as amended prior to being filed for record with the county auditor and in order to be authorized to sell the land thereon by block and lot number.

c. Rewritten Descriptions

Often it becomes either necessary or desirable to rewrite old descriptions of a certain boundary in somewhat different language to clear up ambiguities in an earlier description, to make the language conform to that of a new division line, or for various other reasons. In doing so, the draftsman may create new ambiguities or change the meaning of the words so that they may actually describe a different line from the one described by the earlier description. This raises the question of what interpretation should be attached to the new words and figures. In this connection, the intention of the draftsman must be considered. If, from all the surrounding circumstances, it can be said that the draftsman intended to describe the same line as the earlier description called for, then effect would probably be given to that intention. If not, then the grantor named in the deed or contract will retain any land not included in the new description. On the other hand, if the rewritten description embraces more land than the grantor owns, since he could only convey what he owns, the line would probably stand at the old line, and include only what the grantor owned.

2. Monuments

a. In General

Even the most accurately written deed containing an absolutely clear expression of the intention of the grantor and grantee is of no practical meaning whatsoever until applied to the ground. The linking factors between the description and the boundary are the monuments. Monuments may be any tangible, physical object in existence which marks a point or line on the earth's surface. They may be securely set and clearly marked concrete posts, ordinary high tide or mean high tide, extreme low tide or low water line, the thread of a stream, a tree or row of trees, an iron pipe, a rotten stump, a surveyor's lot stake, a fence, a building, a curb, a sidewalk, a hedge, a cliff, or a mountain range. However, a monument must be in existence, and not be merely capable of being established by reference to some existing monument. (There is a rule of law which treats an "adjoiner" as a monument, but this is a pure fiction, and will be considered later. An

"adjoiner" is a boundary of an adjacent tract, which boundary is coincident with the boundary of the tract being described.)

(1) Date of the Monument in Relation to Date of the Deed

In order for a monument to be a valid link between the description and the boundary in question, that monument must have either been (a) already in place at the time of execution of the deed, or (b) placed at, or soon after, the execution of the deed. The purpose of this rule stems from the basic rule that monuments control over the written descriptions in the event the monuments and descriptions are at variance, and if the monuments were allowed to be placed at any time after the actual transfer of title, it would have the effect of leaving many boundaries actually undetermined for unlimited periods.[100] The law, however, allows some latitude of discretion to the parties in placing their monuments after execution of the deed, but the precise length of time that will be allowed is a question which the courts determine in each particular case. In the recent Washington case of Atwell v. Olson,[101] a monument placed pursuant to an agreement between the vendor and vendee, six months after the execution of an executory contract to convey real property was held to have fixed the boundary line.

(2) Proving Genuineness of Existing Original Monuments

(a) Identification

While it may make no difference whether we (1) establish that the existing monument is the actual original monument or (2) seek to re-establish the location of a missing original monument, the nature of the evidence employed in arriving at these conclusions is necessarily different, and in order properly to employ the evidence which has been gathered, it is important to keep in mind which of these two ultimate facts we are trying to establish.

In laying out a boundary, the first step is to find some kind of a monument which appears to bear a relation to the boundary in question, this relation appearing from either the description or

100. Matthews v. Parker, 163 Wash. 10, 14, 299 Pac. 354 (1931).

101. 30 Wn. (2d) 179, 190 P. (2d) 783 (1948).

references to the monument in the deed, or from the general surrounding circumstances.[102] Even though it is not mentioned in the deed, the monument may still be ascertained from the surveyor's field notes applicable to the property or from admissible parol evidence, so that it may be used as a factor in determining the boundary in question.

> "'The mark or object [monument] is of no probative value if the field notes or grant contain no description of it or no reference to it and there is no evidence directly connecting it with the work of the original surveyor. But, on the other hand, when it is clearly shown that the mark was made or the object placed by the surveyor at the time he made his survey and for the purpose of marking a line or corner, then the object or mark has probative value.'"[103]

Almost every survey is open to some kind of attack upon its validity, and quite often this attack takes the form of a controversy with respect to whether or not the proper monuments were used. One surveyor may say that "A" is the proper starting point, while another surveyor may say that "B" is the proper starting point. Hence it is at once apparent that the surveyor must, of necessity, have some affirmative evidence to demonstrate that his monument is the proper one. He has what is known as the "burden of proof," that is, the duty to come forward with some substantial evidence to establish the validity of his monument. It is obviously not enough for him to say "I have found the monument referred to in the deed," and then stop there. He must be prepared to support his statement with valid reasons. As the Court observed in Boyt v. Weiser, supra, the burden of proof is on plaintiff (the party asserting that the monument in question is the correct one) to establish a definite dependable beginning point.[104]

In Suter v. Campbell,[105] the Supreme Court of

102. Reed v. Firestock, 93 Wash. 148, 160 Pac. 292 (1916); Cunningham v. Weedin, 81 Wash. 96, 142 Pac. 453 (1914).

103. Boyt v. Weiser, (Texas) 180 S.W. (2d) 953 (1944).

104. Ibid.

105. 139 Wash. 44, 46, 245 Pac. 29 (1926).

Washington refused to sustain a survey based on monuments set by the City of Seattle because there was no evidence that the monuments were planted when the platting was done. And in Wilson v. Creech Bros. Contracting Co.[106] the Court said that the evidence would have to be clear and convincing that the monument found by plaintiffs was in fact the true original quarter corner. If plaintiff has introduced sufficient evidence to prove the monument, then the burden of proof shifts to the defendant who has claimed the monument to be lost in order to disprove the monument.[107]

(b) What Kind of Evidence Is Legally Admissible to Prove a Monument as an Existing Original

Generally speaking, evidence usually will be admissible to tie the deed to the monument provided it has some reasonable relation to the issues raised.

The most common type of admissible evidence to prove a monument is the physical characteristics of the monument itself, such as its apparent age, material from which it was made or consists, and markings. These factors may or may not be mentioned in the deed.

Another common type of admissible evidence is that of the testimony of the surveyor who actually placed the monument in question, as well as his field notes.[108] Statements by persons who claim actually to have seen the monuments placed, or in place, will be considered by the court. Even hearsay evidence with reference to the proving and locating of monuments is admissible, that is, it may be admitted even though the party testifying did not see the monument himself, but only heard some one else say he saw it.[109]

The proximity of the monument to the theoretical location is quite often important. In Milwaukee Land Co. v. Weyerhauser Timber Co.,[110] the Court was not convinced that a quarter corner monument 950 feet north of its theoretical location

106. 159 Wash. 120, 127, 292 Pac. 109 (1930).

107. State v. Shepardson, 30 Wn. (2d) 165, 191 P. (2d) 286 (1948); and Lappenbusch v. Florkow, 175 Wash. 23, 26 P. (2d) 388 (1933).

108. Lappenbusch v. Florkow, supra; and Strunz v. Hood, 44 Wash. 99, 87 Pac. 45 (1906).

109. Inmon v. Pearson, 47 Wash. 402, 92 Pac. 279 (1907).

110. 106 Wash. 604, 180 Pac. 879 (1919).

was the original. And in Wilson v. Creech Bros. Contracting Co.,[111] the fact that the alleged quarter corner monument was 300 feet east of its theoretical location undoubtedly had some effect on the Court's conclusion that it was not the original.

An important class of evidence to prove that a monument is the original, the admissibility of which is sometimes questioned, is reputation evidence. The question of its admissibility has only occasionally been considered by the State Supreme Court of Washington. In Hope v. Brown,[112] the Court admitted evidence that a certain post had the general reputation of being the meander corner, although the evidence by itself was held not to be enough to establish the corner. And in Inmon v. Pearson,[113] prima facie evidence with respect to general reputation was held to be admissible to establish the location of a lost or obliterated line or corner.

Reputation evidence is also quite important in establishing monuments which are clearly not originals, but are accepted as replacing the originals, and hence are accepted as correct. (See B. 2. a. (3), infra).

(c) How much Evidence Is Necessary to Prove a Monument

No definite answer can be given to the question of how much evidence is necessary to prove a monument; each case must be resolved on its own merits. In general, the Court considers (a) what kind of evidence is given, (b) who gives it, and then must determine the credibility of the witnesses and the weight to be attached to the evidence. Hearsay evidence, for example, will probably not be given as much weight as direct evidence, and testimony as to reputation will not have the same weight as direct testimony of a witness who witnessed the actual placing of the monument. The Court attaches much significance to who is claiming the monument in question to be the proper one.

111. 159 Wash. 120, 292 Pac. 109 (1930). See also, Reed v. Firestock, 93 Wash. 148, 160 Pac. 292 (1916).

112. 74 Wash. 421, 133 Pac. 1030 (1913).

113. 47 Wash. 402, 92 Pac. 279 (1907). See also Thoen v. Roche, 57 Minn. 135, 58 N.W. 686 (1894).

Thus, in Bowdey v. Tracey,[114] the plaintiff had the engineer who had retraced the meander line in question testify concerning the location of the position of the meander line. There being no evidence to the contrary, the Court accepted the engineer's finding of fact. In State v. Shepardson,[115] the Court found the monument which had been declared to be the original monument by a licensed civil engineer with 41 years' experience was in fact the original monument, being strongly impressed with the qualifications of the engineer. In Lappenbusch v. Florkow,[116] the Court attached great weight to the testimony of a former county engineer in determining the location of an original monument.

(3) The Relocation of Lost or Missing Monuments

Many monuments disappear with the passage of time, but the establishment of the location of the ORIGINAL monument is permitted, and evidence is admissible to establish its location. This procedure is to be distinguished from that discussed above of proving a monument, which has been discovered as being in fact the original monument.

After a diligent search has been made for the original monument without success, and it is necessary or desirable to determine its location, the only possible way in which this can be done is by reference to monuments of some type which are now in existence and which bear some dimensional relationship to the missing marker. These reference monuments, which are being used in this connection to establish the location of a missing original monument, will themselves have to be proved as existing monuments. In the re-establishment of missing monuments, the burden of proof is upon the party who claims that he has properly relocated the missing monument to establish that fact.

After proving the reference monument, the person who asserts that he has relocated the missing monument must be prepared to come forward with some definite evidence with respect to the distance and direction from the reference monument to the alleged location of the missing monument. The

114. 138 Wash. 364, 244 Pac. 545 (1926).
115. 30 Wn. (2d) 165, 191 P. (2d) 286 (1948).
116. 175 Wash. 23, 26 P. (2d) 388 (1933).

three most common sources of evidence on distance and direction from the reference monument are:

(a) The description itself in the event the reference monument and missing monument are both mentioned therein.

(b) Witnesses who saw the original monument which is now missing while it was still in existence and noted the distance and direction from the reference monument or that the missing monument was coincident with the reference monument.

(c) Testimony that the missing original monument is, by reputation, a certain distance and direction from, or coincident with, the existing and proved reference monument.

Before any attempt is made to re-establish the missing original monument, it should again be pointed out that the surveyor must be certain that no trace of the original itself can be found. One of the cardinal rules of boundaries is that monuments will control over courses and distances, and hence if the original monument still exists, its location must control over any evidence, from whatever source, to the contrary.[117] With reference to the first above-mentioned source of evidence, namely, the description itself, when an original monument is missing and the surveyor is attempting to re-establish it from a proved, existing reference monument by using distances and directions given in the description, it is essential that the actual distance measured now between the reference monument and the missing monument be as nearly identical as possible to the distance which was measured off by the original surveyor. It is quite possible that the original surveyor's chain was not exactly standard length, or it may also be that the chain now being used is not precisely standard. For this reason, it is accepted practice

117. Thayer v. Spokane County, 36 Wash. 63, 78 Pac. 200 (1904); Inmon v. Pearson, 47 Wash. 402, 92 Pac. 279 (1907); Cadeau v. Elliott, 7 Wash. 205, 34 Pac. 916 (1893); Bullock v. Yakima Valley Transportation Co., 108 Wash. 413, 184 Pac. 641 (1919) (See 187 Pac. 410 re rehearing en banc); Greer v. Squire, 9 Wash. 359, 37 Pac. 545 (1894); Heybrook v. Index Lumber Co., 49 Wash. 378, 95 Pac. 324 (1908); Campbell v. City of Seattle, 59 Wash. 612, 110 Pac. 546 (1910).

to find two adjacent monuments of the original survey, measure the distance bwtween them, compare the measured distance with that given in the description, and then proportion the measured distance from the reference to the missing monument's location.

The second source of evidence in re-establishing a missing original monument from an existing proved reference monument, is the testimony of witnesses who saw the original monument while it was still in existence and noted the distance and direction from the reference monument or that it was coincident with the existing reference monument. In Cunningham v. Weedin,[118] the quarter corner had been obliterated, and local residents were permitted to testify as to the corner's location with reference to the road, schoolhouse, cemetery, and certain private boundary monuments. In Samples v. Kergan,[119] the fence built at the time of the original division (hence an original monument) was completely gone, but the Court admitted parol evidence that the fence had been built four feet from a concrete wall which was in existence at the time of the trial. The Court held that this evidence was sufficient to re-establish the location of the original monument, i.e., the fence.

A special, but important situation with respect to the second source of evidence arises in connection with replacement monuments, that is, when the reference monument is coincident with the missing original monument. In King v. Carmichael,[120] testimony that the witnesses themselves had placed a fence post, which constituted a reference monument, in exactly the same location as the original section corner was held to re-establish the missing section corner. And in Hale v. Ball[121] testimony that a present fence, which constituted a reference monument, was built coincident with the old, now lost, quarter corner, was held sufficient to re-establish the quarter corner.

The third source of evidence in re-establishing a missing original monument (as distinguished

118. 81 Wash. 96, 142 Pac. 453 (1914).
119. 109 Wash. 503, 187 Pac. 383 (1920); See also Parks v. Newcomer, 117 Wash. 646, 202 Pac. 244 (1921).
120. 45 Wash. 127, 87 Pac. 1120 (1906).
121. 70 Wash. 435, 126 Pac. 942 (1912).

from proving an existing monument as an original) ((see B.2.a.(2) (b), supra)) a certain distance and direction from, or coincident with, the existing and proved reference monument (or replacement monument) is that of reputation. While there appear to be no Washington cases on this point, it would seem that the rule admitting reputation evidence to establish an existing original monument would be applicable.[122] In Suter v. Campbell,[123] a dispute had arisen with respect to the validity of certain monuments which had been set by the City of Seattle subsequent to the platting of the property involved. The Court held that there was no showing that the monuments placed on the ground by the city survey coincided with those placed by the original platter. No attempt was made to show by reputation evidence that the city monuments coincided with the original plat monuments. The question of reputation was not raised in that case. In the light of this decision, which conforms to the established rules of boundaries, it is apparent that any monument which cannot be proved as an original and with respect to which there is no evidence available to show that it replaced an original, is in serious jeopardy unless it may be proved by reputation evidence.

Whenever the boundaries of lands between two or more adjoining owners have been lost or have become obscure or uncertain and such owners cannot agree upon the boundary, one or more of such owners may bring an action in equity in the superior court to have such boundaries re-established. To assist the court in re-establishing such boundaries, the court may appoint not to exceed three disinterested commissioners residing in the state, one or more of whom shall be practical surveyors, to prepare an advisory report regarding the boundary. The court is required to apportion the costs of such proceedings equitably, and such costs constitute a lien against the lands involved.[124]

(4) Special Rules Applicable to Relocation of Lost and

122. Hope v. Brown, 74 Wash. 421, 133 Pac. 612 (1913); Smith v. Chambers, 112 Wash. 600, 192 Pac. 891 (1920); Inmon v. Pearson, 47 Wash. 402, 92 Pac. 279 (1907); Thoen v. Roche, 57 Minn. 135, 58 N.W. 686 (1894).
123. 139 Wash. 44, 245 Pac. 29 (1926).
124. RCW 58.04.020, 58.04.030, and 58.04.040.

Obliterated Federal Government Survey Monuments

The division of public lands in the United States into townships and sections is a function of the Federal Government, and consequently, when lost, the rules for their re-establishment have been prescribed by an act of Congress.[125]

It should be noted that the Bureau of Land Management distinguishes between "lost" and "obliterated" monuments. "Lost" monuments are those of which there is not only no physical trace, but also no other evidence of their location, save for the other official government monuments in the vicinity, namely, quarter corners, section corners, and meander corners. On the other hand, the Bureau defines "obliterated" monuments as monuments of which no physical trace can be found, but with respect to which there are only indications of their location in the immediate vicinity, such as witness trees, rocks, streams, and ravines, save for the section, quarter, or meander corners in the vicinity. The term "missing," as heretofore used above, would apply equally to both lost and obliterated monuments under the Bureau's terminology.

The federal rules respecting the re-establishment of lost and obliterated corners are quite explicit. Several Washington cases have reiterated the rule that a lost quarter corner must be re-established on a straight line between the adjacent section corners, and midway between them.[126] This rule is accurate for the normal case, but does not apply in every situation, such as that of quarter corners on the north and west sides of a township. In re-establishing any monument, the surveyor is actually trying to retrace, as closely as possible, the steps of the original survey, and recourse to the original field notes is necessary for this purpose. True, in the case of practically all interior sections of a township, the quarter corner should be placed midway between the two adjacent section corners, because that was where the original surveyor theoretically placed them, but if in fact he did not do so and made appropriate notes in his records, then the monument must be restored in accordance with those notes, provided always, of course, that the monument is now lost.[127]

With respect to the re-establishment of lost section corners, there is apparently no Washington decision which indicates how such corners may be re-established, but it is likely that the applicable federal rule that "a lost interior corner of four sections will be restored by double proportionate measurement" would be closely followed by our State Supreme Court.[128]

With respect to the re-establishment of lost meander corners, the only Washington case discovered involving a lost meander corner merely declares: "'Lost meander corners are to be restored by running the line from the nearest known corner . . .'"[129] This statement is not entirely in accord with the federal rule which is: "Lost meander corners, originally established on a line projected across the meanderable body of water marked upon both sides will be relocated by single proportionate measurement, after the section or quarter-section corner upon the opposite sides of the missing meander corner have been duly identified or relocated."[130]

b. Specific Cases of Reference Monuments and Their Utilization in Conjunction with Applicable Rules of Law

Monuments may be classified into two distinct categories with respect to their effect on the location of boundaries. First, there are the monuments which are actually located on the boundary in question, and

125. U.S.C.A. Tit. 43, Secs. 751, 752, and 753. See U.S. Department of Interior, Bureau of Land Management, Restoration of Lost or Obliterated Corners and Subdivision of Sections, (Washington, D.C.: U.S. Government Printing Office, 1939) which may be procured from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

126. Koenig v. Whatcom Falls Mills Co., 67 Wash. 632, 122 Pac. 16 (1912); King v. Carmichael, 45 Wash. 127, 87 Pac. 1120 (1906); State v. Shepardson, 30 Wn. (2d) 165, 191 P. (2d) 286 (1948); Haybrook v. Index Lumber Co., 49 Wash. 378, 95 Pac. 324 (1908); and Hale v. Ball, 70 Wash. 435, 126 Pac. 942 (1912).

127. Sturnz v. Hood, 44 Wash. 99, 87 Pac. 45 (1906).

128. Restoration of Lost or Obliterated Corners and Subdivision of Sections, op. cit., Sec. 1027.

129. Simmons v. Jamieson, 32 Wash. 619, 622, 73 Pac. 700 (1903).

130. Restoration of Lost or Obliterated Corners, and Subdivision of Sections, op. cit., Sec. 1036. Also see this publication for a detailed explanation of "single" and "double" proportionate measurement.

these will be referred to herein as boundary monuments. Second, there are the monuments which do not coincide with the boundary in question, but bear some relation to that boundary by evidence which may be adduced from such sources as the description itself or extrinsic parol evidence. These will be referred to as reference monuments. Since, whether or not a monument falls within one or the other of these categories depends upon its relation to the boundary with which we are dealing, a single monument may be a reference monument as to one tract of land, and at the same time also may be a boundary monument with respect to another tract. It is extremely important to take cognizance of this distinction because the rule is well-established that a boundary monument will control over a reference monument. In other words, monuments control over courses and distances, but it must be observed that before courses and distances in a description can have any meaning, there must be some beginning monument on the ground from which to measure the indicated courses and distances. This beginning monument, with respect to the boundary in question, will be a reference monument.

In the preceding discussion concerning the relocation of lost monuments, certain rules were enumerated as controlling in their re-establishment. In the following treatment of proportionate measurement and apportionment of excess and deficiency, attention will be focused upon points which were presumably never fixed by monuments as part of the original survey. The basic rules which control the relocation of lost monuments are also applicable to monuments which were never set at the outset, but since these subjects have been treated separately in the standard texts and treatises, in the interest of clarity and conformance to accepted usage, these subjects will be treated separately here.

(1) Proportionate Measurement

When it appears on the face of the description that only one reference monument is intended to control the boundary in question, and that it was not intended that the boundary be controlled by two or more reference monuments, then to establish that boundary, using the courses and distances given in the description, the proper procedure is to adjust those courses and distances so that they harmonize as closely as possible with the rest of the survey. This is accomplished by measuring the distance between two existing reference monuments which have been proved as original

or replacement monuments and which were placed as a part of the original survey of which the boundary in question is a part. When this measured distance is compared to the distance indicated in the description between the two monuments, there will, in all probability, be some discrepancy between the measured distance and the distance in the deed, and if so, the procedure is then to determine the ratio between them and apply that ratio to the courses and distances given in the deed which determines the boundary we are trying to establish.[131] It is usually advisable to measure between more than two sets of existing reference monuments in order to determine the required ratio, and in the event of discrepancies between the two ratios, the surveyor must simply use his own judgment with respect to whether or not to use one or the other, or the average of the two ratios.

(2) Excess and Deficiency

Very often the description will be of such a nature that the boundary in question may be controlled by two or more reference monuments, and the boundary may have different locations depending upon which of the monuments is used as a point of beginning. This situation commonly arises when plat descriptions are used and when the only points of beginning are, for example, the monuments at the street intersections, and the boundary in question is in the interior of the block. Upon taking the distances given on the plat and measuring from one monument, the boundary in question is found at "A"; but when measuring from the other monument, the boundary is found to be at "B." There is usually no indication in the plat which prescribes any preference of one reference monument over the other.

The solution to the problem is found in the rules of apportioning excess and deficiency. The rule is that when there is an ambiguity in the description with respect to which of two or more reference monuments shall control the boundary, then any excess or deficiency of the distance measured on the ground over or under the distance indicated in the description must be apportioned among the several tracts between the two monuments in propor-

131. Clark, Surveying and Boundaries, op. cit., Sec. 376, p. 463.

tion to the lineal frontage of each tract.[132] Thus, if there are 10 lots in the block, the designated width of each being 30.00 ft. or a total of 300 feet, but the actual measurement on the ground between streets is found to be 301.00 ft., then the width of each lot will actually be 30.10 ft. instead of the designated 30.00 ft.

It is important to note than if there is no ambiguity in the description as to which of two or more reference monuments is to be used, then the rule of excess and deficiency will not apply; i.e., if A conveys X plus Y land to B, and then A conveys Y plus Z land to C, the conveyance of Y land to B controls over the conveyance of the Y land to C.[133] In other words, the grantee first in time of a portion of a tract set off by metes and bounds, without reference to other conveyances, is not required to yield any portion of his land to satisfy a deficiency in a subsequent overlapping grant from the common grantor, the rule of excess and deficiency having no application. In the event there is a gap in land conveyed to B and C that is not conveyed by the descriptions in either deed, then usually B will not take the excess, but as to whether C will take the excess depends upon whether we can find that A intended to retain the strip in question. This, therefore, presents a question of deed construction.

An important qualification upon the rule of apportionment of excess and deficiency is that which arises when one of the lots is not dimensioned on the plat. In that event, it is presumed that the platter was aware that there may have been an excess or deficiency, and he intended to place all of such discrepancy into that particular lot, leaving the other lots at exactly the indicated width.[134]

The effect of established streets upon the rule of apportionment of excess and deficiency is exceedingly important. "Streets that have been opened in supposed conformity to a plat and have been long acquiesced in should be accepted as fixed monuments in locating lots or blocks thereto

132. Booth v. Clark, 59 Wash. 229, 109 Pac. 805 (1910).
133. Hruby v. Lonseth, 63 Wash. 589, 116 Pac. 26 (1911).
134. 11 C.J.S. Sec. 124, p. 738.

or fronting thereon."[135] When such a result is reached, the streets themselves become the reference monuments, and the excess or deficiency must be apportioned, using each block as a separate unit.

(3) Subdivision of Government Sections

When the United States Government divided the public lands into townships and sections, its surveyors set only eight monuments to indicate the external boundaries of each section, namely, the four section corners and the four quarter corners.[136] When any tract of land less than a complete section is described, then some of these eight monuments become reference monuments, and when the land is sold and described in terms of a certain part of a section, the normal rules of excess and deficiency will apply. These rules have been crystallized and set forth in the Bureau of Land Management's pamphlet entitled Restoration of Lost or Obliterated Corners and the Subdivision of Sections. (1939) op. cit.[137] Probably the most com-

135. Skelton, Boundaries and Adjacent Properties, op. cit., Sec. 219, p. 218.

136. For further information with respect to the survey of Public Lands of the United States, it is strongly recommended that the following publication be examined: U.S. Department of Interior, Bureau of Land Management, Manual of Instructions for the Survey of the Public Lands of the United States 1947, (Washington, D.C.: U.S. Government Printing Office, 1947). Section 57 of the Criminal Code of 1909 (35 Stat. 1008, 1099; 18 U.S.C. Sec. 111), provides a penalty for the unauthorized alteration or removal of any Government survey-monument or marked trees, as follows:

> "Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully cut down any witness tree or any tree blazed to mark the line of a Government survey, or shall willfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than $250, or imprisoned not more than six months, or both."

137. Re duty of director of highways and the board of county commissioners and the county engineer to fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter-section corners, meander corners, and witness markers wherever any such

monly used rule in this field is that which says that the center of the section will be located by the intersection of the two lines which connect the North and South quarter corners, and the East and West quarter corners.[138] These two lines divide the section into the Northwest, Northeast, Southwest, and Southeast quarters. To subdivide these quarter sections further, simply measure the length of each side of the quarter, divide each side in half and connect the opposite mid-points, thereby obtaining four quarter-quarter sections. Further subdivisions are made in a similar manner.

There are special rules applicable to the subdivision of sections on the north and west sides of a township, and, for these, attention is directed to the above-mentioned publication of the Bureau of Land Management.[139]

(4) Adjoiners

In describing a tract of land by metes and bounds, it is often necessary or desirable to describe one or more of the boundary lines in terms of the boundary line of an adjacent tract, when it is intended that the two lines be coincident. (This same procedure is used in describing corner points of the tract.) This procedure is permissible provided of course the boundary line of the adjacent tract is now actually marked by monuments or may be established by using the description of the adjoining tract.

Very often, for the sake of clarity, the written description of the tract in question will describe the boundary both by metes and bounds and by reference to the adjoiner, and the question then arises as to which of these two calls (the language in the deed describing the boundary line)

original monuments or markers fall within the right of way of any primary state highway or county road, and to aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any primary state highway or county road, by permitting inspection of the records in the office of the department of highways and of the board of county commissioners and of the county engineering office, see RCW 47.36.010 and 36.86.050.

138. Heybrook v. Index Lumber Co., 49 Wash. 378, 95 Pac. 324 (1908); King v. Carmichael, 45 Wash. 127, 87 Pac. 1120 (1906); and Packsher v. Fuller, 6 Wash. 534, 33 Pac. 875 (1893).

139. U.S.C.A., Tit. 43, Secs. 751, 752.

shall control. The general rule is that the call for the adjoiner shall have the same status as a boundary monument, and it will therefore control over the metes and bounds call in the event of a discrepancy between these two calls.[140] This rule is applicable even though the adjoiner is not at the time marked on the ground by monuments.[141] The rule is logical since the grantor, by referring to the adjoining boundary, clearly indicates that he intends to convey all the land which he owns to the boundary line.

C. The Effect upon the Legal Boundary of Events Subsequent to the Original Division

1. Conduct of the Owner or Occupant

a. Boundary Agreement Pursuant to Survey

The location of a boundary line by a common grantor is binding upon the grantees and their successors in interest, and where an existing line was established by a survey and mutual agreement between the former owners, subsequent purchasers to whom the line was pointed out when they purchased the property, are bound by the definite agreement made by their predecessors in interest.[142]

b. Oral Boundary Agreements[143]

It frequently happens that two adjoining land owners will enter into and fix a boundary simply by oral agreement. If this boundary does not coincide with that which would be fixed by applying the criterion of control of intention as evidenced by the description

140. Fagan v. Walters, 115 Wash. 454, 197 Pac. 635 (1921); and Austrian American Benevolent Cemetery Association v. Tasse Brien De Desrochers, 124 Wash. 179, 214 Pac. 3 (1923).

141. Edson v. Knox, 8 Wash. 642, 36 Pac. 698 (1894).

142. Angell v. Hadley et al., 33 Wn. (2d) 837, 207 P. (2d) 191 (1949). See also, Martin et al. v. Hobbs et al., 44 Wn. (2d) 787, 270 P. (2d) 1067 (1954). Where the evidence was insufficient to establish a laurel hedge, fence, and return wall from the bulkhead as the actual boundary fixed by the common grantor, the true boundary line was the one which was located by independent surveys made by licensed land surveyors employed by one of the parties. Martin et al. v. Hobbs et al., supra.

143. J.R. Ellis, "Boundary Disputes in Washington," Washington Law Review, (1948) Vol. 23, p. 125. Declarations of a deceased person against his interest relative to private boundaries are admissible. Fowles et al. v. Sweeney, 41 Wn. (2d) 182, 248 P. (2d) 400 (1925).

and the monuments with respect to a particular parcel of real property, such an oral agreement would govern and not fall within the purview of the Statute of Frauds when:

(1) Either a disagreement obtains between the two adjoining owners as to the true location, or[144]

(2) Uncertainty obtains concerning the true location of the line.

Where a boundary has been defined in good faith by the interested parties and thereafter for the same period of time as is required to acquire title by adverse possession, acquiesced in, acted upon, and improvements made with reference to the line, such a boundary will be considered the true dividing line and will govern. Whether or not the line so established is correct is immaterial. The lack of a well defined boundary mutually agreed upon by the adjoining owners is a fatal defect to the claim of adverse possession by acquiescence. In an action to quiet title based on adverse possession, the Court held the plaintiffs failed to sustain their burden upon the essential fact of the exclusive nature of their possession, one of the essential elements of adverse possession, where both parties used the strip involved, the defendants having entered it when they cultivated, sprayed, and harvested their pears from trees whose branches overhung it, there was no ouster of the defendants from the strip, and they did not know or have reason to know that the plaintiffs possessed the strip and claimed it as their own.[145]

c. Boundary by Estoppel[146]

When A makes certain statements to B, and B in reliance upon those statements does certain acts to his detriment, then we say that A is later estopped to deny the truth of those statements when B attempts to hold A to his word. Thus, if A tells B: "I, A, do not own this strip of land, but you, B, do own it," and then B, in justifiable reliance upon this statement, in good faith, erects a building or makes some other extensive improvements on the strip, then A is later estopped from claiming that he, A, in fact owns the

144. Hruby v. Lonseth, 63 Wash. 589, 116 Pac. 26 (1911).

145. Scott et al. v. Slater et al., 42 Wn. (2d) 366, 255 P. (2d) 377 (1953) and Lindley v. Johnson, 42 Wn. (2d) 257, 84 Pac. 822 (1906).

146. Ellis, "Boundary Disputes in Washington," op. cit., 125, 128.

land, and B thereby becomes the legal owner of the strip. The Supreme Court of the State of Washington has approved the doctrine of establishing boundaries by estoppel and has held that the following three conditions precedent must be present in order to apply it:

"(1) An admission, statement, or act inconsistent with the claim afterwards asserted;

(2) Action by the other party on the faith of such an admission, statement, or act; and

(3) Injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act."[147]

The burden of proof is of course upon the party asserting the estoppel and the evidence required to support it must be "clear and cogent."[148] The representation must be made by the party who is the owner of the adjacent land, and misrepresentation by a seller to his buyer will not of course bind the adjacent owner, unless the seller is also the owner of the adjacent strip.[149]

d. Statutory Settlement of Disputed Boundary

When two or more adjoining land owners[150] cannot agree upon the location of their boundary, or when it has become lost or uncertain, then such a land owner may petition the Superior Court to establish the boundary pursuant to RCW 58.04.020, 58.04.030, and 58.04.040. RCW 58.04.030 provides that the Court may, in its discretion, appoint not more than three commissioners, at least one of whom shall be a "practical surveyor," and that these commissioners shall report their findings to the Court. The report of the commissioners is advisory only, and the parties requesting establishment of the boundary may take exception to the commissioners' report. Under RCW 58.04.030, the appointment of a commission in an action to establish lost boundaries is within the discretion of the trial court, and its ruling in refusing to appoint a commis-

147. Thomas v. Harlan, 27 Wn. (2d) 512, 178 P. (2d) 965 (1947).

148. Tyree v. Gosa, 11 Wn. (2d) 572, 119 P. (2d) 926 (1941).

149. Strom v. Arcorace, 27 Wn. (2d) 478, 178 P. (2d) 959 (1947).

150. See Cady v. Kerr, 11 Wn. (2d) 1, 118 P. (2d) 182 (1941) to the effect that a vendee in an executory real estate contract may not invoke RCW 58.04.020.

sion will not be disturbed in the absence of abuse of discretion.[151]

e. Adverse Possession

The legal effect of the doctrine of adverse possession is to take the legal title to land from one owner and to vest title in another person with the consent of the first owner. RCW 4.16.020 requires that actions for the recovery of real property must be brought within ten years. There is a presumption that one who enters into the possession of the property of another does so with the permission of the true owner and holds in subordination to his title.[152] To establish adverse possession under this statute, the State Supreme Court of Washington has declared that the following must be present: Actual and uninterrupted, open and notorious, and hostile and exclusive possession under a claim of right made in good faith. Color of title is not required.

RCW 7.28.050, 7.28.070, and 7.28.080 require that actions for the recovery of real property be brought

151. Booten et al. v. Peterson et al., 34 Wn (2d) 563, 209 P. (2d) 349 (1949).

152. Mourik v. Adams, 47 Wn. (2d) 278, 287 P. (2d) 320 (1955). The use of a way of necessity is permissive and not adverse; therefore it is not the foundation of a prescriptive right. Todd v. Sterling et al., 45 Wn. (2d) 40, 273 P. (2d) 245 (1954). On an issue as to whether the public had acquired a prescriptive right to use a logging road, the existence of gates erected by the owner and the logging company which built the road is conclusive as to permission to use it since the gates were notice to the world that the road was not a public road, and this permissive use may not ripen into a prescriptive right. Millard et al. v. Granger, 46 Wn. (2d) 163, 279 P. (2d) 438 (1955). If the user is initiated by permission, it does not ripen into a prescriptive right unless there has been a distinct and positive assertion by the dominant owner of a right hostile to the servient estate. Gray et al. v. McDonald et al., 46 Wn. (2d) 574, 283 P. (2d) 135 (1955). The presumption that one entering into the possession of another's land does so with the true owner's permission, is spent and disappears as soon as there is proof that such use has been open, notorious, hostile, continuous, and for the required time, and the one claiming the easement has established a prima facie case, which it is incumbent upon the one denying the existence of the easement to controvert; and whether the use was hostile or permissive becomes a question of fact. Anderson et al. v. Secret Harbor Farms, Inc. et al., 47 Wn. (2d) 490, 288 P. (2d) 252 (1955).

within seven years; the requirements of these seven-year statutes will be considered later.

(1) The Elements of Adverse Possession

The basic elements of adverse possession were set forth early in the case of Skansi v. Novak,[153] in which the Court said that possession must be "actual and uninterrupted, open and notorious, and hostile and exclusive and under a claim of right made in good faith." To constitute title, these elements must have been continuously present for the entire ten year period. These requirements for adverse possession have been reaffirmed in many subsequent cases.[154] We now turn to a consideration of these elements of adverse possession.

(2) The Actual and Uninterrupted Element

Either the person who claims to be the owner, or a person claiming under him must be in actual possession of the land. It is not necessary that the adverse holder himself be in actual possession provided there is someone in possession who holds possession under him, such as a tenant or contract purchaser.[155] In Erickson v. Murlin,[156] the Supreme Court of the State of Washington held that land under the overhanging eaves of a garage was acquired by adverse possession.

In Pettigrew v. Greenshields,[157] entry upon an unoccupied and unimproved 640 acre tract for the purpose of cutting firewood has been held to be insufficient possession to be adverse. The mere filing of a plat has been held not in itself to be sufficient to constitute adverse possession because there was no actual possession.[158] The piling of wood, mowing of hay, and planting of grass have been held to be insufficient in Smith v. Chambers.[159]

153. 84 Wash. 39, 44, and 45, 146 Pac. 160 (1915); Grays Harbor Commercial Co. v. McCulloch, 113 Wash. 203, 193 Pac. 709 (1920); and Miller v. O'Leary, 44 Wash. 172, 87 Pac. 113 (1906).

154. Bowden-Gazzam Co. v. Kent, 22 Wn. (2d) 41, 154 P. (2d) 292 (1944); Skoog v. Seymour, 29 Wn. (2d) 355, 187 P. (2d) 304 (1947); and Santmeyer v. Clemmancs, 147 Wash. 354, 266 Pac. 148 (1928).

155. Foote v. Kearney, 157 Wash. 681, 290 Pac. 226 (1930); O'Brien v. Schultz et al., 45 Wn. (2d) 769, 278 P. (2d) 322 (1954).

156. 39 Wash. 43, 80 Pac. 853 (1905).

157. 61 Wash. 614, 112 Pac. 749 (1911).

158. Ferry v. Hodson, 22 Wn. (2d) 613, 156 P. (2d) 913 (1945).

159. 112 Wash. 600, 192 Pac. 891 (1920).

The adverse possession must be continuous and uninterrupted during the whole statutory period.[160] If the adverse holder, (A), purports to sell the land, and the purchaser from him goes into possession, then possession by the adverse holder, (A), is not considered interrupted, and the new owner is allowed to "tack" the time during which his vendor held the land adversely.[161] Also, the granting of a lease and possession to the lessee, or the termination of a lease and revesting of possession in the landlord-owner will not interrupt the possession, and the landlord may "tack" the tenant's possession to his own.[162] However, if the adverse holder abandons possession, and then he himself, or another adverse holder later repossesses adversely, the statute is interrupted, and the ten year period must begin to run anew from the time of the last taking of possession.[163] The holding is also considered interrupted when the adverse holder accepts a lease of the land from the true owner.[164]

(3) The Open and Notorious Element

The term "open and notorious" means that the adverse holder must not only be in actual possession, but also the outward appearance of his possession must be such that it is apparent to anyone who might observe the land that someone is occupying the land as an owner would occupy it. The purpose of this requirement is to give the true owner at least an opportunity to know that he will lose title to his land unless he acts to protect it. The erection of inexpensive shanties on the land by the claimant was held in Blake v. Schriver[165] to be insufficiently open and notorious to put the true owner on notice. The erection of these shanties was not what a normal owner of the land would

160. Bowden-Gazzam Co. v. Kent, supra.

161. Naher v. Farmer, 60 Wash. 600, 111 Pac. 768 (1910).

162. McAuliff v. Parker, 10 Wash. 141, 38 Pac. 744 (1894).

163. Noyes v. Douglas, 39 Wash. 314, 81 Pac. 724 (1914).

164. Northern Pacific Ry. Co. v. George, 51 Wash. 303, 98 Pac. 1126 (1908).

165. 27 Wash. 593, 68 Pac. 330 (1902). A purchaser in possession of property is estopped to deny the title of his vendor and will not be permitted to acquire a title adverse to him. Netheny et al. v. Olson et al., 41 Wn. (2d) 173, 247 P. (2d) 1011 (1952).

do in that particular community. In Flint v. Long,[166] the adverse holder cleared the land, fenced it, and planted shrubbery, and the Court said: "The face and appearance of the land must have been completely changed so notice must have been given to anyone who saw that possession had been taken." The Court found the "open and notorious" element had been satisfied. Oral declarations by the adverse holder that he owns the land or oral declarations of adverse intent may give added weight to the open and notorious element, but it is not required that the claimant make such a declaration to initiate the running of the statutory period nor to support an action to establish title by adverse possession.[167] The acts of the user most frequently control. If his acts clearly evince an intention to claim land as its owner, a general declaration by the user that he did not intend to claim another's land will not prove lack of intention.[168]

The owner must have actual notice of, or acquiesce in, the adverse holding or the occupation by the adverse holder must be so apparent that acquiescence therein by the owner will be presumed for the reason that such adverse holding could not escape his attention.[169] However, when the adversely occupied land is "wild, broken, mountainous, and sparsely settled," then the true owner must have actual notice of the occupation before he loses title by adverse possession.[170]

In order to establish an easement by prescription, the claimant must prove that his use of the right of way has been, for a period of ten years, open, notorious, continuous, uninterrupted, over a uniform route, adverse to the owner of the servi-

166. 12 Wash. 342, 41 Pac. 49 (1895).

167. Foote v. Kearney, 157 Wash. 681, 290 Pac. 226 (1930); O'Brien v. Schultz et al., 45 Wn. (2d) 769, 278 P. (2d) 322 (1954); and Gray et al. v. McDonald et al., 46 Wn. (2d) 574, 283 P. (2d) 135 (1955).

168. Faubion v. Elder et al., 49 Wn.(2d) 300 (1956).

169. Downie v. Renton, 167 Wash. 374, 9 P. (2d) 372 (1932). See also, Bowers v. Legerwood, 25 Wash. 14, 64 Pac. 936 (1901); Schmitz v. Klee, 103 Wash. 9, 173 Pac. 1026 (1918); and McNight v. Basilides, 19 Wn. (2d) 391, 143 P. (2d) 307 (1943).

170. Murray v. Bousquet, 154 Wash. 42, 280 Pac. 935 (1929); Todd v. Sterling et al., 45 Wn. (2d) 40, 273 P. (2d) 245 (1954).

ent estate, and with the knowledge of such owner at a time when he was able in law to assert and enforce his rights. An adverse use will not ripen into a prescriptive right unless the owner of the servient estate knows of, and acquiesces in, such use, or unless the use is so open, notorious, visible, and uninterrupted that knowledge and acquiescence on his part will be presumed. Protest by the property owner is not sufficient to interrupt adverse use and prevent the prescriptive right to an easement from accruing, but there must be an act which actually does cause a cessation of use, temporarily at least.[171]

In order to establish a highway by prescription, it is necessary that the public use be general, uninterrupted, and continuous for a period

171. Huff et al. v. Northern Pacific Railway Co., 38 Wn. (2d) 103, 228 P. (2d) 121 (1951). See also, Todd v. Sterling et al., 45 Wn. (2d) 40, 273 P. (2d) 245 (1954). In connection with establishing an easement by prescription to maintain a pipeline across the defendant's property, if the use of another's land is open, notorious, and adverse, the law presumes knowledge or notice in so far as the owner is concerned; and if the owner knew of the adverse user, no further proof as to notice is required to establish such an easement by prescription. Hovila et al. v. Bartek et al., 48 Wn. (2d) 238, 292 P. (2d) 877 (1956).

In order to establish an easement by implication, one must prove three essentials: (1) Unity of title and subsequent separation by grant of the dominant tenement, (2) apparent and continuous user, and (3) the easement must be reasonably necessary to the proper enjoyment of the dominant tenement. An implied grant of easement of a sewer line was held not to have been established where it appeared that the servient tenement was severed first and not the dominant tenement; that the sewer was invisible and its existence unknown to the parties; and there was no showing that the easement was reasonably necessary to the proper enjoyment of the dominant tenement. Wreggitt v. Porterfield et al., 36 Wn. (2d) 638, 219 P. (2d) 589 (1950). See also, Silver v. Strohm et al. 39 Wn. (2d) 2, 234 P. (2d) 481 (1951) and Adams et al. v. Cullen et al., 44 Wn. (2d) 502, 268 P. (2d) 451 (1954).

((A provision in a contract to convey real estate "free of encumbrances" does not refer to granted easements, permanent in character, which either are known to a vendee or the existence of which he should have known or ascertained had he made a reasonable investigation. Somers et al. v. Leiser et al., 43 Wn. (2d) 66, 259 P. (2d) 843 (1953)).

of ten years under a claim of right.[172]

(4) Hostile and Exclusive

"Hostility" does not refer to the state of mind of the adverse holder, but rather to the manner and character of his possession. In discussing the element of hostility, the State Supreme Court of Washington in King v. Bassindale[173] said: "The term 'hostile' does not import enmity or ill-will, but rather imports that the claimant is in possession as owner, in contradistinction to holding in recognition of or subordination to the true owner." In other words, the hostility is to be directed to the title of the true owner, rather than toward the true owner as an individual.

In order that one may acquire title by adverse possession, the occupation by the adverse holder must be exclusive of the true owner and also of third persons.[174]

(5) Claim of Right Made in Good Faith

With respect to the element of "claim of right made in good faith," the Supreme Court of the State of Washington has observed that the adverse holder must have a bona fide belief that he is the true owner in order to acquire title.[175] In Young v. Newboro,[176] the Court observed: "The mere possession of land beyond the real boundary line is not sufficient to make such holding adverse. There must be, in addition to that, an intention to claim title to the disputed area and to hold as the owner."

Where a party has shown an open, visible, con-

172. Wheeler v. Rendsland et al., 38 Wn. (2d) 685, 231 P. (2d) 322 (1951). Where land is wild, uncultivated, and unenclosed, the user by the public is deemed to be permissive. Turner et al. v. Davisson et al., 47 Wn.(2d) 375, 287 P. (2d) 726 (1955).

173. 127 Wash. 189, 192, 220 Pac. 777 (1923); Fisher v. Hagstrom, 35 Wn. (2d) 632, 214 P. (2d) 654 (1950).

174. King v. Bassindale, supra. See also H. T. Tiffany, The Law of Real Property, (Chicago: Callaghan and Co., 1939) (3rd Ed.) Vol. IV, Sec. 1141, pp. 421 et seq.

175. Ramsey v. Wilson, 52 Wash. 111, 100 Pac. 177 (1909); Bowden-Gazzam Co. v. Kent, 22 Wn. (2d) 41, 154 P. (2d) 292 (1941); Skansi v. Novak, 84 Wash. 39, 146 Pac. 160 (1915); and Roesch v. Gerst, 18 Wn. (2d) 294, 138 P. (2d) 864 (1943). But cf. Bowden-Gazzam Co. v. Hogan, 22 Wn. (2d) 27, 154 P. (2d) 285 (1944) in which only "Claim of right" was in issue.

176. 32 Wn. (2d) 141, 200 P. (2d) 975 (1948).

tinuous, and unmolested use of land for a period of time sufficient to acquire title by adverse possession, the use will be presumed to be under a claim of right, and the burden of rebutting that presumption by showing that the use was permissive is upon the owner of the servient estate, but there is no presumption that the use is adverse when the lands in question are vacant, open, unenclosed, and unimproved. In an action for trespass, defended on the ground that the defeidant had acquired a prescriptive right to maintain a dam on the property involved, the court held that no such prescriptive right had been acquired.[177]

If one by mistake encloses adjoining land belonging to another, and claims it as his own and satisfies the requirements of adverse possession, his actual possession of such erroneously enclosed land will operate to divest the adjoining owner of title thereto.[178] On the other hand, if, being ignorant of the boundary line, one through mistake, places his fence so as to enclose a part of the adjoining owner's property, but makes no claim, however, to the land thus erroneously enclosed, but only to the true line as it may be subsequently ascertained, he does not acquire title to such land by adverse possession because the possession is not hostile and is not under a claim of right.[179]

A common grantor, under certain circumstances, may establish the boundary line between two tracts, both of which he owned. It is true that a purchaser of real estate may be bound by a line fence established by a common grantor, but such cases turn upon peculiar circumstances disclosed by the evidence. In the absence of an agreement that a fence between the properties shall be taken as a true

177. Stroup et al. v. Kieszling et al., 35 Wn. (2d) 620, 214 P. (2d) 163 (1950).

178. Phinney v. Campbell, 16 Wash. 203, 47 Pac. 502 (1896); Bowers v. Ledgerwood, 25 Wash. 14, 64 Pac. 936 (1901); Alverson v. Hooper, 108 Wash. 510, 185 Pac. 808 (1919); Thornely v. Andrews, 45 Wash. 413, 88 Pac. 757 (1907); and Faubion v. Elder et al., 49 Wn. (2d) 300, 301 P. (2d) 153 (1956).

179. Thornely v. Andrews, supra; Wilcox v. Smith, 38 Wash. 585, 80 Pac. 803 (1905); Lindley v. Johnson, 42 Wash. 257, 84 Pac. 822 (1906); and Brown et al. v. Hubbard et al., 42 Wn. (2d) 867, 259 P. (2d) 391 (1953).

boundary line, mere acquiescence in its existence is not sufficient to establish a claim of title to a disputed strip of ground. Possession of land up to a fence will not be considered hostile for the purpose of establishing title by adverse possession, where it appears that, at the time the fence was built, the adjoining landowners did not know the true location of the boundary line, and it was agreed between them that the fence was to be moved if a later survey was made changing the line, and the fence was never taken as the true line.[180]

In Young v. Newbro et al.,[181] the Court observed that the mere building of a fence to control pasturage on disputed land does not constitute such possession as would establish an adverse title. However, such an act would not militate against a claim of adverse holding if the use of the land were an incident under a claim of right, the question being whether a property fence is maintained as a matter of convenience or under a claim of ownership, but in this instance acquisition of title by adverse possession was not established.[182]

In an action to establish a boundary line between beach lots, the Court concluded that the evidence established adverse possession by the defendants up to the disputed boundary, where it appeared that the property was used as a recreation center every week end during the summers, that visitors camped there, that trees were planted by the defendants along the road for the one-hundred-foot width claimed by them, that the property was known by everybody as the defendants' property, and that the defendants drove stakes at each end of their boundary as they knew it.[183]

When property is held continuously during the statutory period of ten years up to a barrier recognized and accepted as the boundary line between it and adjoining property, under a claim of right as owner, although the true line is on the proper-

180. Beck v. Loveland et al., 37 Wn. (2d) 249, 222 P. (2d) 1066 (1950).

181. 32 Wn. (2d) 141, 200 P. (2d) 975 (1948).

182. See also, Taylor v. Talmadge et al., 45 Wn. (2d) 144, 273 P. (2d) 506 (1954).

183. Booten et al. v. Peterson et al., 47 Wn. (2d) 565, 283 P. (2d) 1084 (1955).

ty of the person or persons so holding, that portion between the true line and the recognized barrier is held adversely to the true owner.[184]

(6) Color of Title

For the purpose of adverse possession, under statutes of limitations relating to real property, the term "color of title" may be defined as that which has the semblance or appearance of title, legal or equitable.

Under the ten-year statute of limitations, (RCW 4.16.020), the adverse holder does not have to come into possession by virtue of even an invalid instrument or conveyance for the reason that no showing of color of title is required to acquire title by adverse possession under this statute, but a claim of right made in good faith is always essential when there is no color of title.[185]

(7) The Seven-Year Statutes

Under RCW 7.28.050, 7.28.070, and 7.28.080, title to land may be acquired by adverse possession in seven years provided certain specifically mentioned factors are present.

Under RCW 7.28.050 any person who has been in "actual, open, and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States," or from any tax or judicial sale, acquires title to the land so occupied.

Under RCW 7.28.070, every person in actual, open, and notorious possession of lands under claim and color of title, made in good faith and who continues in possession for seven successive years, and pays all taxes during that seven year period, becomes the legal owner of such lands to the extent and according to the purpose of the possessor's paper title. However, title cannot be acquired by simply paying taxes when the claimant did nothing toward taking actual possession of the

184. Niven v. Sheehan et al., 46 Wn. (2d) 152, 278 P. (2d) 784 (1955). On the other hand, the use of land for occasional picnics is not such an adverse use as to evidence a hostile claim to establish a right by adverse possession. See Harkins v. Pozzi et al., 150 Wash. Dec. 214, 218 (1957).

185. Skansi v. Novak, 84 Wash. 39, 45, 146 Pac. 160 (1915), and Roesch v. Gerst, 18 Wn. (2d) 294, 138 P. (2d) 846 (1943).

land.[186] It also should be kept in mind that the payment of taxes and local assessments upon a strip of land used adversely as a street, for the prescriptive period, does not estop the city from claiming the same as the street by dedication and prescription. The right of the public to use the land as a street established by continuous and uninterrupted use cannot be admitted away by the taxing officers.[187]

Under RCW 7.28.080, every person having color of title, made in good faith to vacant and unoccupied land who pays all taxes thereon for seven successive years becomes the legal owner thereof to the extent and according to the purport of his or her paper title.[188] "Tacking" of time by successive adverse holders is expressly permitted under this statute.

A reservation of mineral rights in a deed constitutes a severance of title to the mineral rights and title to the surface, and where there has been such a severance, possession of the surface by the owner is not adverse to the owner of the minerals below it. Where there has been a severance of title to mineral rights, title thereto by adverse possession can be acquired, but all of the essential elements of adverse possession must exist as in the ordinary case of title to real property by adverse possession, and the exploration for minerals or mining operations relied upon to establish those essential elements must be open, notorious, continuous and hostile, and under color of title where that is required. Where there has been a severance of title to the mineral rights and title to the surface of a tract of land, but no segregation for taxation purposes, the purchasers of such land under a deed without reservations or exceptions, by paying taxes on the property as a unit for seven years, did not acquire title to the mineral rights by adverse possession by virtue of the seven year adverse possession statute, namely, RCW 7.28.080, since payment of taxes on the

186. Waldrip v. Olympia Oyster Company et al., 40 Wn. (2d) 469, 244 P. (2d) 273 (1952).

187. City of Seattle v. Hinckley, 67 Wash. 273, 121 Pac. 444 (1912).

188. Mourik v. Adams, 47 Wn. (2d) 278, 287 P. (2d) 320 (1955).

land does not constitute payment of the taxes on the mineral rights.[189]

(8) Adverse Possession - the State and Political Subdivisions

In the absence of enabling legislation, adverse possession will not run against the United States.[190] Adverse possession also will not run against the state.[191] Adverse possession will neither run against a county[192] nor a municipality[193] with respect to property held by a county or a municipality in a governmental capacity for public purposes. Title to part of a dedicated street or road cannot be acquired by adverse possession by an individual; however, title to an abandoned street may be so acquired.[194] However, the state, and presumably its political subdivisions, can acquire title from a private owner by adverse possession provided, of course, they satisfy all of the requirements.[195] The fact that the state, while it was in possession of land for park purposes, ceased to make improvements thereon and allowed depreciation to occur during the ten-year period after possession was taken, does not establish the fact or justify the conclusion that it either recognized a superior title or continued in possession in subordination thereto, and accordingly under such circumstances since the possession of the real estate by the state was actual and uninterrupted, open and notorious, hostile and exclusive, and under a claim of right made in good faith, the state acquired title to land by adverse possession.[196]

(9) Divesting Title Acquired by Adverse Possession

Where a title has become fully vested by adverse possession, it cannot be divested by parol abandonment or relinquishment, or by verbal declarations of the disseizor, nor by any other act short of what would be required in a case where his title was by deed. The fact that one has ceased to use a strip of land in such a way that her claim of adverse possession is apparent, did not divest her of the title she had acquired. The recording statutes (RCW 65.08.060 and 65.08.070) do not apply to titles acquired by adverse possession, and a conveyance of the record title to a bona fide purchaser under such statutes does not extinguish the title acquired by adverse possession.[197]

In Palin et al. v. Sherman et al.,[198] which involved an action to determine the ownership of a strip of land as between a claimant in possession having title by adverse possession and a claimant seeking possession having a tax title, where there was no finding of fact that the adverse holder had paid the taxes on the property, the Court held the rule that the foreclosure of a tax lien is a proceeding in rem and invests the purchaser with a new title superior to any possessory rights, however exclusive or adverse, was applicable, and the trial court properly quieted title to the property in the claimant under the tax title.

On the other hand, while in Berry et al. v. Pond,[199] the Court observed that a title by adverse possession is no higher or better than any other, nor is the adverse possessor exempt from taxation or tax foreclosure, and his defenses do not differ from those of any other owner of real estate, and a tax title when valid is a new title

189. McCoy v. Lowrie et al., 42 Wn. (2d) 24, 253 P. (2d) 415 (1953).

190. Roediger v. Cullen, 26 Wn. (2d) 690, 175 P. (2d) 669 (1946).

191. Bowden-Gazzam Co. v. Kent, 22 Wn. (2d) 41, 154 P. (2d) 292 (1944); RCW 4.16.160 and 4.16.170.

192. RCW 4.16.160 and 4.16.170; Gustaveson v. Dwyer, 83 Wash. 303, 145 Pac. 458 (1927).

193. RCW 4.16.160 and 4.16.170; West Seattle v. West Seattle Land Improvement Company, 38 Wash. 359, 80 Pac. 549 (1905).

194. O'Brien v. Schultz et al., 45 Wn.(2d) 769, 278 P. (2d) 322 (1954).

195. Snively v. State, 167 Wash. 385, 9 P. (2d) 773 (1932). A public highway over private property can be acquired by prescription when the public use is general, uninterrupted, and continuous for a period of ten years, under a claim of right. Todd v. Sterling et al., 45 Wn. (2d) 40, 273 P. (2d) 245 (1954) and Wheeler v. Rendsland et al., 38 Wn. (2d) 685, 231 P. (2d) 322 (1951).

196. State v. Stockdale et al., 34 Wn. (2d) 857, 210 P. (2d) 686 (1949).

197. Mugaas v. Smith et al., 33 Wn. (2d) 429, 206 P. (2d) 332 (1949).

198. 38 Wn. (2d) 806, 232 P. (2d) 105 (1951).

199. 33 Wn. (2d) 560, 206 P. (2d) 506 (1949).

and takes free from all pre-existing claimants, nevertheless that does not mean that a tax foreclosure is subject to no defenses or that the judgment of foreclosure is valid against one who has either paid his taxes in fact or made a bona fide attempt to do so. Thus a judgment of tax foreclosure is not valid against one who has acquired the property through adverse possession and who has paid his taxes in fact, although under a wrong description. It is the fact of payment of the taxes on the land occupied, not the description used in the tax receipt, that is controlling.

(10) General Observations

The whole subject of adverse possession is essentially a matter falling in theory within the orbit of the lawyer rather than the surveyor, but the possibility of its application is involved in practically every survey in re-establishing old lines. Nevertheless, it is essential that surveyors have a good working knowledge of the applicable statutes and rules of law in establishing boundaries. For example, a surveyor must apply rules of law when determining the proper starting monuments, in interpreting a deed, in apportioning excess or deficiency, and in many other situations. In the event a boundary is controverted by reason of certain problems which are essentially legal in character, such as adverse possession, the surveyor should refer his client to his lawyer.

2. Vacation of Roads, Streets, Alleys, and Highways

Sec. 32, Ch. 19, p. 603, Laws of 1889-1890 provides:

"Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopened for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same barred by lapse of time."

The above statute remained in full force and effect until March 12, 1909 when the following significant proviso was added thereto by Sec. 1, Ch. 90, Laws of 1909:[200]

200. Ch. 90, Laws of 1909 contained an emergency clause and therefore became effective on March 12, 1909, the date on which it was approved by the Governor.

"Provided, however, That the provisions of this section shall not apply to any highway, street, or alley or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, nor to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places."

Sec. 32, Ch. 19, p. 603, Laws of 1889-1890, until its amendment on March 12, 1909, applied to all platted streets and alleys outside cities and towns that were unopened for five years prior to March 12, 1909.[201] When such platted streets or alleys were dedicated prior to March 12, 1909, but remained unopened for a period of less than five years prior to March 12, 1909, such streets and alleys were not vacated by the 1889-1890 act.[202]

The right of the public to use an alley has been held to have been lost through having remained unopened for public use for five years after dedication where it appeared that the plat was filed in 1889 and no public use was ever made of the alley, and only a portion thereof had ever been opened for use as a private driveway.[203]

Where streets were dedicated to a public use on a plat of an area outside of an incorporated city or town, were used only intermittently by the public, and not systematically for the period from 1890 through 1895, under Sec. 32, Ch. 19, p. 603, Laws of 1889-1890, they were vacated in 1895 by operation of law and the public lost any easement rights in the streets.[204] This 1889-1890 statute is self-executing. Where a platted county road became vacated through being unopened for five years, a judicial determination is necessary to free the land from the apparent record easement, but the owner's failure to obtain such an adjudication does not restore to the public any interest which it lost through nonuser.[205]

While a vacation of streets or alleys under the 1889-

201. Brown et al. v. Olmstead, 49 Wn. (2d) 210 (1956).

202. Gillis et al. v. King County, 42 Wn. (2d) 373, 255 P. (2d) 546 (1953).

203. Burkhard v. Brown et al., 32 Wn. (2d) 613, 203 P. (2d) 361 (1949).

204. Turner et al. v. Davisson et al., 47 Wn. (2d) 375, 287 P. (2d) 726 (1955) and Howell v. King County et al., 16 Wn. (2d) 557, 134 P. (2d) 80 (1943).

205. Van Sant v. City of Seattle, 47 Wn. (2d) 196, 287 P. (2d) 130 (1955).

1890 statute terminated all interest of the public in platted streets and alleys, it did not affect private easements over the streets by those who had purchased with reference to a plat and in reliance thereon. Title to such vacated streets and alleys continued to be subject to such easements.[206]

The boundaries of land abutting upon public streets and highways may be changed when such streets or highways are lawfully vacated. By virtue of the enactment of an amendment to Rem. Rev. Stat. Sec. 9298 by the 1949 session of the state legislature, namely, Chapter 14, Laws, 1949, when cities or towns vacate streets by municipal ordinance, such an ordinance may provide that the city may retain an easement or right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services.[207] Under RCW 35.79.040, whenever any street or alley in an incorporated city or town is vacated by action of the legislative body of the city or town, the property so vacated shall belong to the abutting owners, one-half to each.[208]

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206. Brown et al. v. Olmstead, 49 Wn. (2d) 210 (1956).

207. Although platted alleys may become vacated insofar as any right in the public to use the same is concerned by reason of their having remained unopened for public use for five years after dedication, the private easement derived from the original plat and acquired by virtue of deeds is not affected by such vacation of the public. Burkhard v. Bowen et al., 32 Wn. (2d) 613, 203 P. (2d) 361 (1949).

208. State ex rel. Patterson v. Superior Court for King County, 102 Wash. 331, 173 Pac. 186 (1918). Where the same person owned the property on both sides of the street at the time the street was vacated, the area covering the street adjacent to his property reverts to such owner. If such owner thereafter conveys all of his property and describes the street as a distinct parcel in his conveyance, such conveyance operates as notice to all subsequent grantees in the chain of title that the street is to be treated as a separate tract which does not pass by subsequent conveyance of abutting lots. Hagen v. Balcom Mills, 74 Wash. 462, 133 Pac. 1000; (134 Pac. 1051 Rehearing) (1913) and Raleigh-Hayward Co. v. Hull, 167 Wash. 39, 8 P. (2d) 988 (1932). When a street is laid out wholly on the owner's own land and on the margin of his tract so that he owns nothing beyond, if such an owner conveys all of his land abutting upon the street, the purchaser acquires the fee to the entire street. Gifford v. Horton, 54 Wash. 595, 103 Pac. 988 (1909) and Rowe v. James, 71 Wash. 267, 128 Pac. 539 (1912). These two cases involve plats inside an incorporated area, and indicate the necessity of determining whether the original platter dedicated land on the margin of his tract and owned nothing beyond when considering the vacation of such a marginal street and the parties to whom it reverts.

With respect to the vacation of streets and alleys in unincorporated towns, RCW 58.12.110 declares that upon vacation, title to the street shall vest in the persons owning property bordering on each side of the street in "equal proportions," provided the lots or grounds so bordering on the street or alley have been sold by the original owner. This statute further provides that "If the original owner possesses the title to the lots or grounds bordering the street or alley on one side only, the title shall vest in the owner, if the board [of county commissioners] shall judge it to be just and proper."

With respect to the effect of forces of nature, such as accretion and avulsion upon boundaries, attention is invited to the text above relating to problems pertaining to location of tracts of land in relationship to water.

VIII. TABLE OF COMPILATION OF SELECTED LAWS OF THE STATE OF WASHINGTON RELATING TO SURVEYS, SUBDIVISION AND PLATTING, AND BOUNDARIES

IX. COMPILATION OF SELECTED LAWS OF THE STATE OF WASHINGTON RELATING TO SURVEYS, SUBDIVISION AND PLATTING, AND BOUNDARIES

(Note: When "City," "County," or "State," appear to the right above the statute, this means the statute applies either to municipalities, counties, or the state respectively as indicated. When neither "City," "County," nor "State" appears in that position, the statute applies to two or more of these political units.)

I. RESPONSIBILITY OF PUBLIC OFFICIALS TO DETERMINE LINES AND AREAS

A. Harbor Lines and Harbor Areas - State Board of Land Commissioners

State

43.65.040 Harbor line commission. The board of state land commissioners shall constitute the commission provided for in article 15, section 1 of the state Constitution, to locate and establish harbor lines beyond which the state shall never sell or lease any rights whatever, and to determine the width of the harbor area between such harbor lines and the line of ordinary high tide, which area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [(i) 1927 ch. 255, Sec. 11; RRS Sec. 7797-11. (ii) 1927 ch. 255, Sec. 105; RRS Sec. 7797-105.]

State

43.65.050 Relocation of inner harbor line. Whenever it appears that the inner harbor line of any harbor area heretofore determined has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board of state land commissioners may relocate and reestablish such inner harbor line outside of the meander line, and all tidelands within the inner harbor line so reestablished and relocated may be sold as other tidelands of the first class in accordance with the provisions of law. [1927, ch. 255, Sec. 106; RRS Sec. 7797-106.]

B. Survey and Platting of First Class Tide and Shore Lands and Establishment of Waterways - Commissioner of Public Lands

State

79.16.200 First class tide and shore lands to be platted - Public waterways. The commissioner shall, simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon thereafter as practicable, survey and plat all tide and shore lands of the first class not heretofore platted, and in platting the same lay out streets which shall thereby be dedicated to public use, subject to the control of the cities or towns in which they are situated, and establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state, which waterways shall include within their boundaries, as near as practicable, all navigable streams running through such tidelands, and shall be located at such other places as in the judgment of the commissioner may be necessary for the present and future convenience of commerce, and such waterways heretofore established under former laws or hereafter established shall be reserved from sale or lease as public ways for water craft until vacated as provided herein, and the commissioner shall appraise the value of such platted tide and shore lands and enter such appraisment in the records of his office. [1927 ch.255, Sec. 107; RRS Sec. 7797-107.]

C. Platting of Tide and Shore Lands and Filing Thereof - Commissioner of Public Lands

79.16.220 Record of platted tide and shore lands. The commissioner shall prepare plats showing all tide and shore lands surveyed, platted, and appraised by him in the respective counties, on which shall be marked the location of all such lands, with reference to the lines of the United States survey of the abutting upland, and shall prepare in well-bound books a record of his proceeding, including a list of said tide and shore lands surveyed, platted, or replatted, and appraised by him and his appraisal of the same, which plats and books shall be in triplicate, and the commissioner shall file one copy of such plats and records in his office, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands platted, or replatted, are situated. [1927 ch. 255, Sec. 109; RRS Sec. 7797-109.] (See RCW 79.16.350.)

79.16.350 Second class tide or shore lands detached from upland. Tide or shore lands of the second class which are separated from the upland by navigable waters, shall be sold at not less than five dollars per acre. An applicant to purchase such tide or shore lands shall, at his own expense, survey and cause to be filed with his application a plat of the surveys of the land applied for, which surveys shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall also file the field notes of the survey of such land with his application. The commissioner shall examine and test said plat and field notes of survey, and if found incorrect or indefinite, he shall cause the same to be corrected or may reject them and cause a new survey to be made. [1927 ch. 255, Sec. 122; RRS Sec. 7797-122.]

D. Unplatted State Lands within Cities and Towns to Be Platted by State Commissioner of Public Lands

79.12.040 Maximum area of urban or suburban state land -

Platting. The commissioner shall cause all unplatted state lands, except capitol building lands, within the limits of any incorporated city or town, or within two miles of the boundary thereof, where the valuation of such lands is found by appraisement to exceed one hundred dollars per acre, to be platted into lots and blocks, of not more than five acres in a block, before the same are offered for sale, and not more than one block shall be offered for sale in one parcel. The commissioner may designate or describe any such plat by name, or numeral, or as an addition to such city or town, and, upon the filing of any such plat, it shall be sufficient to describe the lands, or any portion thereof, embraced in such plat, according to the designation prescribed by the commissioner. Such plats shall be made in duplicate, and when properly authenticated by the commissioner, one copy thereof shall be filed in the office of the commissioner and one copy in the office of the auditor of the county in which the lands are situated. The county auditor shall receive and file such plats without compensation or fees and make record thereof in the same manner as required by law for the filing and recording of other plats in his office. [1927 ch. 255, Sec. 25; RRS Sec. 7797-25.]

E. Appraising Tide or Shore Lands and Recording of Plat Data

State

79.16.230 Record of appraisement. In appraising tide or shore lands hereafter platted or replatted by him, the commissioner shall appraise each lot, tract, or piece of land separately, and shall enter in a well-bound book to be kept in his office a description of each lot, tract, or piece of tide or shore land, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business on or prior to the date of the plat or replat, the commissioner shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract, or piece of land covered, and the appraised value of the land covered, with, and exclusive of, the improvements. [1927 ch. 255 Sec. 110; RRS Sec. 7797-110.]

F. Survey of County Boundaries

County

36.04.400 Survey of county boundaries. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by all the counties affected thereby, and approved by the board of county commissioners of such counties. The cost making such surveys shall be apportioned equally among the counties interested, and the board of county commissioners shall audit the same, and the amounts

shall be paid out of the county current expense fund. [Code 1881 Sec. 2661; RRS Sec. 3990.]

II. STATUTES OF LIMITATION

4.16.020 Actions to be commenced within ten years. The period prescribed in RCW 4.16.010 for the commencement of actions shall be as follows:

Within ten years:

Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action. [Code 1881 Sec. 26; 1877 p 7 Sec. 26; 1854 p 363 Sec. 2; RRS Sec. 156.]

4.16.160 Application of limitations to actions by state, counties, municipalities. The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: Provided, That there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: And further provided, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute. [1955 ch. 43 Sec. 2. Prior: 1903 ch. 24 Sec. 1; Code 1881 Sec. 35; 1873 p 10 Secs. 34, 35; 1869 p 10 Secs. 34, 35; 1854 p 364 Sec. 9; RRS Sec. 167, part.]

4.16.170 Tolling of statute - Actions deemed commenced, when. For the purpose of tolling any statute of limitations an action shall not be deemed commenced until the complaint is filed. [1955 ch. 43 Sec. 3. Prior: 1903 ch. 24 Sec. 1; Code 1881 Sec. 35; 1873 p 10 Sec. 35; 1869 p 10 Sec. 35; RRS Sec. 167, part.]

7.28.050 Limitation of actions for recovery of real property - Adverse possession under title deducible of record. That all actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as

aforesaid, but when the possessor shall acquire title after taking such possession, the limitation shall begin to run from the time of acquiring title. [1893 ch. 11, Sec. 1; RRS Sec. 786.]

7.28.070 Adverse possession under claim and color of title - Payment of taxes. Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section. [1893 ch. 11, Sec. 3; RRS Sec. 788.]

7.28.080 Color of title to vacant and unoccupied land. Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: Provided, however, If any person having a better paper title to said vacant and unoccupied land shall, during the said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns, shall not be entitled to the benefit of this section. [1893 ch. 11, Sec. 4; RRS Sec. 789.]

III. STATUTORY ESTABLISHMENT OF LOST OR UNCERTAIN BOUNDARIES

A. Between Private Parties

58.04.010 Corners and lines may be established - Procedure - Expense. If a majority of the resident owners of a section or part of a section of land, after having given at least ten days' notice to all other persons or to their agents, holding land in the same section or part of the section who reside in the township, desire to have any of their corners and lines established, relocated, or perpetuated, the county commissioners shall make the required surveys, and the expense thereof shall be borne by all the persons benefited in proportion to the amount of work done for each, to be determined by the commissioners. If any person thus benefited fails to pay his share of the expense, the commissioners shall certify the amount due, and to whom due, to the county assessor, who shall assess it upon the land of that

person, to be collected in the same manner as other taxes, and held subject to the order of the person named in the commissioners' certificate as being entitled to it. [1895 ch. 77, Sec. 9; RRS Sec. 4154.]

58.04.020 Suit to establish lost or uncertain boundaries. Whenever the boundaries between two or more adjoining tracts of land have been lost, or become obscure or uncertain, and the owners cannot agree thereon, one or more of them may bring an action in equity, in the superior court of the county in which the land or part thereof is situated, and the court may order the boundaries established and properly marked. [1886 p 104, Sec. 1; RRS Sec. 947.]

58.04.030 Commissioners - Survey and report. The court may appoint as commissioners not exceeding three disinterested persons, one or more of whom shall be a practical surveyor, residents of the state, who before entering upon their duties shall be sworn to perform their duties faithfully. They shall thereupon survey, erect, establish, and properly mark the boundaries, and shall return to the court a plat of the survey and the field notes thereof, together with their report. The report shall be advisory, and either party may except thereto, in the same manner as to a report of referees. [1886 p 105, Sec. 2; RRS Sec. 948.]

58.04.040 Proceedings, conduct of - Costs. The proceedings shall be conducted as other civil actions, and the court, on final decree, shall apportion the costs equitably, and the costs so apportioned shall be a lien upon the land, severally, as against any transfer or encumbrance made of or attaching to the land, from the time of the filing of the complaint: Provided, That a notice of lis pendens is filed in the auditor's office of the proper county. [1886 p 105 Sec. 3; RRS Sec. 949.]

B. Between Counties

County

36.05.010 Suit in equity authorized. Whenever the boundary line between two or more adjoining counties in this state are in dispute, or have been lost by time, accident or any other cause, or have become obscure or uncertain, one or more of the counties, in its corporate name, may bring and maintain suit against such other adjoining county or counties, in equity, to establish the location of the boundary line or lines. [1897 ch. 76, Sec. 1; RRS Sec. 3964.]

County

36.05.020 Noninterested judge to sit. A suit to establish county boundary lines shall be tried before a judge of the superior court who is not a resident of a county which is a party to such suit, or of a judicial district embracing any such county. [1897 ch. 76, Sec. 2; RRS Sec. 3965.]

County

36.05.030 Residents of affected area may intervene. A major-

ity of the voters living in the territory affected by the disputed, lost, obscure, or uncertain boundary line may, by petition, duly verified by one or more of them, intervene in the suit, and thereupon the court shall have jurisdiction and power, in locating and establishing the boundary line or lines, to strike or transfer from one county to another a strip or portion of such territory not exceeding two miles in width. [1897 ch. 76 Sec. 3; RRS Sec. 3966.]

County

36.05.040 Questions of fact to be determined. The boundaries of such territory, the number of voters living therein, and the sufficiency of such petition are questions of fact to be determined by the court. [1897 ch. 76, Sec. 5; RRS Sec. 3968.]

County

36.05.050 Court may establish boundary line. The court may move or establish any county boundary line or any government section line or subdivisional line of the section in or through which the disputed, lost, obscure, or uncertain boundary line may be located, or if the boundary line is in unsurveyed territory, the court has power to move or establish such boundary line so it will conform to extensions of government section lines already surveyed in that vicinity. [1897 ch. 76, Sec. 6; RRS Sec. 3969.]

County

36.05.080 "Territory" defined. The term "territory," as used in this chapter, means that portion of counties lying along the boundary line and within one mile on either side thereof. [1897 ch. 76, Sec. 4; RRS Sec. 3967.]

IV. ENGINEERING LIENS

60.48.010 Lien authorized. Any person who at the request of the owner of real property or his agent, surveys, establishes, or marks the boundaries of, or prepares maps, plans, or specifications for the improvement of the property, or does any other engineering work upon the property, shall have a lien upon the real property for the agreed price or reasonable value of the work. [1931 ch. 107, Sec. 1; RRS Sec. 1131-4.]

V. PUBLIC LANDS

A. Subdivision

State

79.12.030 Maximum and minimum areas subject to sale or lease - Exception - Approval of regents - Duration of leases. Not more than one hundred and sixty acres of any land granted to the state by the United States shall be offered for sale in one parcel and no university lands shall be offered for sale except with the consent of the board of regents of the University of Washington.

Any land granted to the state by the United States, except capitol building lands, may be sold or leased for any lawful purpose in such minimum areas as may be fixed by the commissioner

of public lands, except that upon the application of a cemetery association for the purchase of school land for a cemetery site or sites, not less than one nor more than ten acres may be offered, and upon the application of a school district for the purchase of a school house site or sites on any school land, not less than three nor more than ten acres may be offered for sale, and in all cases where a schoolhouse is or may be erected upon any school land the school district to which the schoolhouse belongs shall have the preference right for six months after the filing of the final appraisal of such school land to purchase the schoolhouse sites, to include the land occupied by the schoolhouse and grounds, at the appraised value thereof.

Land granted to the state for educational purposes shall not be leased for a longer period than five years except that such lands may be leased for the purpose of prospecting for, developing and producing oil, gas and other hydrocarbon substances or for the mining of coal or for commercial or business purposes for any period not exceeding twenty years with a preferential right to a new lease covering such lands for an additional period not exceeding twenty years. [1955 ch. 394, Sec. 1; 1927 ch. 255, Sec. 24; RRS Sec. 7797-24.]

State

79.12.260 Subdivision of contracts or leases. Whenever the holder of a contract of purchase of any state lands, except capitol building lands, or of any tide or shore lands, or the holder of any lease of any such lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the same to the commissioner with the request to have it divided into two or more contracts, or leases, the commissioner may divide the same and issue new contracts, or leases, but no new contract, or lease, shall issue while there is due and unpaid any interest, rental, or taxes or assessments on the land held under such contract or lease, nor in any case where the commissioner is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee of two dollars for each new contract, or lease, issued, shall be paid by the applicant and such fee shall be paid into the state treasury with other fees of the office. [1955 ch. 394, Sec. 2; 1927 ch. 255, Sec. 59; RRS Sec. 7797-59.]

B. Vacation

79.12.050 Vacation of plat by commissioner. When, in the judgment of the commissioner the best interest of the state will be thereby promoted, he may vacate any plat or plats covering state lands, except capitol building lands, and vacate any street, alley, or other public place therein situated: Provided, That the vacation of any such plat shall not affect the vested rights of any person or persons theretofore acquired therein. In the exercise of the foregoing power and authority to vacate

the commissioner shall enter an order in the records of his office and at once forward a certified copy thereof to the auditor of the county wherein the platted lands are located and the county auditor shall cause the same to be recorded in the miscellaneous records of his office and noted on the plat by reference to the volume and page of the record. [1927 ch. 255, Sec. 26; RRS Sec. 7797-26.]

79.12.060 Vacation on petition - Preference right to purchase. Whenever all the owners and other persons having a vested interest in the lands abutting on any street, alley, or other public place, or any portion thereof, in any plat of state lands, except capitol building lands, lying outside the limits of any incorporated city or town, shall petition the commissioner therefor, he may vacate any such street, alley, or public place or part thereof and in such case all such streets, alleys, or other public places or portions thereof so vacated shall be platted, appraised, and sold or leased in the manner provided for the platting, appraisal, and sale or lease of similar lands: Provided, That where the area vacated can be determined from the plat already filed it shall not be necessary to survey such area before platting the same. The owner or owners or other persons having a vested interest in the lands abutting on any of the lots, blocks, or other parcels platted upon the lands embraced within any area vacated as hereinabove provided, shall have a preference right for the period of sixty days from the date of filing such plat and the appraisal of such lots, blocks, or other parcels of land in the office of the commissioner of public lands, to purchase the same at the appraised value thereof. [1927 ch. 255, Sec. 27; RRS Sec. 7797-27.] (See Laws, 1957,ch. 156, Secs. 1, 2, and 3 (RCW 35.79.010, 35.79.020, and 35.79.030) and RCW 35.79.040 and 35.79.050.)

C. Roads Across

79.36.080 Right-of-way for roads and streets over public lands. Any county or city in the United States of America desiring to locate, establish, and construct a road or street over and across any state lands, or tide or shore lands belonging to the state, or any county desiring to construct any wharf on such tide or shore lands, shall by resolution of the board of county commissioners of such county, or city council or other governing body of such city, or proper agency of the United States cause to be filed in the office of the commissioner a petition for a right-of-way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county road or city engineer or proper agency of the United States, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right-of-way is desired, the amount of land to be taken and the amount of land remaining in each portion of

each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the commissioner, if he deems it for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of any timber thereon and notify the petitioner of such appraised value.

If there is no timber on the proposed right-of-way, or upon the payment of the appraised value of any timber thereon, to the commissioner in cash, or by certified check drawn upon any bank in this state, or postal money order, the commissioner may approve the plat filed with the petition and file and enter the same in the records of his office, and such approval and record shall constitute a grant of such right-of-way from the state. [1945 ch. 145, Sec. 1; 1927 ch. 255, Sec. 85; Rem. Supp. 1945 Sec.7797-85.]

D. Tide and Shore Lands

1. Definition

Subd. 2 of Sec. 1, ch. 36, Laws of 1911 ((Rem. Rev. Stat. Sec. 7833(2)) provides: Tide Lands. All lands over which the tide ebbs and flows from the line of ordinary high tide to the line of extreme low tide, except in front of cities where harbor lines have been established or may hereafter be established, where such tide lands shall be those lying between the line of ordinary high tide and the inner harbor line and excepting oyster reserves.

79.04.020 "Outer harbor line." Whenever used in this title the term "outer harbor line" means a line located and established in navigable waters as provided in article 15, section 1 of the state Constitution, beyond which the state shall never sell or lease any rights whatever. [1927 ch. 255, Sec. 2; RRS Sec. 7797-2.]

79.04.030 "Harbor area." Whenever used in this title the term "harbor area" means the area of navigable tidal waters determined as provided in article 15, section 1 of the state Constitution, which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [1927 ch. 255, Sec. 3; RRS Sec. 7797-3.]

79.04.040 "Inner harbor line." Whenever used in this title the term "inner harbor line" means a line located and established in navigable tidal waters between the line of ordinary high tide and the outer harbor line and constituting the inner boundary of the harbor area. [1927 ch. 255, Sec. 4; RRS Sec. 7797-4.]

79.04.050 "First class tidelands." Whenever used in this title the term "first class tidelands" means the beds and shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile thereof upon either side, and between the line of ordinary

high tide and the inner harbor line, and within two miles of the corporate limits on either side, and between the line of ordinary high tide and the line of extreme low tide. [1927 ch. 255 Sec. 5; RRS Sec. 7797-5.]

79.04.060 "Second class tidelands." Whenever used in this title the term "second class tidelands" means public lands belonging to the state over which the tide ebbs and flows outside of and more than two miles from the corporate limits of any city, from the line of ordinary high tide to the line of extreme low tide. [1927 ch. 255, Sec. 6; RRS Sec. 7797-6.]

79.04.070 "First class shorelands." Whenever used in this title the term "first class shorelands" means public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability, and within or in front of the corporate limits of any city or within two miles thereof upon either side. [1927 ch. 255, Sec. 7; RRS Sec. 7797-7.]

79.04.080 "Second class shorelands." Whenever used in this title the term "second class shorelands" means public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city. [1927 ch. 255, Sec. 8; RRS Sec. 7797-8.]

2. Prospective Purchaser of Second Class Tide or Shore Lands Separated from Upland to Survey and Plat Same - Correction of Plat or Field Notes by Commissioner of Public Lands

79.16.350 Second class tide or shore lands detached from upland. Tide or shore lands of the second class which are separated from the upland by navigable waters, shall be sold at not less than five dollars per acre. An applicant to purchase such tide or shore lands shall, at his own expense, survey and cause to be filed with his application a plat of the surveys of the land applied for, which surveys shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall also file the field notes of the survey of such land with his application. The commissioner shall examine and test said plat and field notes of survey, and if found incorrect or indefinite, he shall cause the same to be corrected or may reject them and cause a new survey to be made. [1927 ch. 255, Sec. 122; RRS Sec. 7797-122.]

3. Accretions

79.16.360 Accretions - Preference right to purchase. Any accretions that may be added to any tract or tracts of tide or shore lands heretofore sold or that may hereafter be sold by the state, shall belong to the state and shall not be sold or offered for sale until such accretions have been first surveyed under the direction of the commissioner, and the owner of the adjacent tide or shore lands shall have the preference right to purchase such lands produced by accretion for thirty days after he is notified by registered mail of his preference right to purchase such accreted lands. [1927 ch. 255, Sec. 123; RRS Sec. 7797-123.]

4. Grants to the United States

79.32.010 Use of such lands granted - Purposes - Limitations. The use of any tide and shore lands belonging to the state, and adjoining and bordering on any tract, piece, or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the government of the United States, for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, is hereby granted to the United States, so long as the upland adjoining such tide or shore lands shall continue to be held by the government of the United States for any of the public purposes above mentioned: Provided, That this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States. [1927 ch. 255, Sec. 150; RRS Sec. 7797-150.]

79.32.030 Easements over tide or shore lands to United States. Whenever application is made to the commissioner by any department of the United States government, for the use of any tide or shore lands belonging to the state, for any public purpose, and the commissioner is satisfied that the United States requires or may require the use of such tide or shore lands for such public purpose, the commissioner may reserve such tide or shore lands from public sale and grant the use of them to the United States, so long as it may require the use of them for such such public purposes. The commissioner shall certify such fact to the governor, who shall thereupon execute an easement to the United States, which shall be attested by the secretary of state, granting the use of such tide or shore lands to the United States, so long as it shall require the use of them for said public purpose. [1927 ch. 255, Sec. 152; RRS Sec. 7797-152.]

5. Preferential Right to Purchase

79.16.240 Notice of filing plat and record of appraisement - Appeal. The commissioner shall, before filing in his office the plat and record of appraisement of any tide or shore lands platted and appraised by him, cause a notice to be published once each week for four consecutive weeks in a newspaper published and of general circulation in the county wherein the lands cov-

ered by such plat and record are situated, stating that such plat and record, describing it, is complete and subject to inspection at the office of the commissioner and will be filed on a certain day to be named in the notice.

Any person claiming a preference right of purchase of any of the tide and shore lands platted and appraised by the commissioner, and who feels aggrieved at the appraisement fixed by the commissioner upon such lands, or any part thereof, may within sixty days after the filing of such plat and record in the office of the commissioner (which shall be done on the day fixed in said notice), appeal from such appraisement to the superior court of the county in which the tide or shore lands are situated, in the manner provided herein for appeals from orders or decisions.

The prosecuting attorney of any county or city attorney of any city in which such lands are situated shall at the request of the governor, or of ten freeholders of the county or city, in which such lands are situated, appeal on behalf of the state, or the county, or city, from any such appraisement in the manner hereinabove provided.

Notice of such appeal shall be served upon the commissioner, and he shall immediately notify all persons claiming a preference right to purchase the lands the appraisement of which has been appealed from.

Any party, other than the state, county, or city, appealing, shall execute a bond to the state with sufficient surety, to be approved by the commissioner, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisement appealed from, and the clerk of the court shall file a certified copy thereof in the office of the commissioner. The appraisement fixed by the court shall be final. [1927 ch. 255, Sec. 111; RRS Sec. 7797-111.]

79.16.250 Preference right of upland owner - How exercised. The owner or owners of land abutting or fronting upon tide or shore lands of the first class platted and appraised by the commissioner shall have the right, for sixty days following the filing of the final appraisal of the tide or shore lands with the commissioner, to apply for the purchase of all or any part of the tide or shore lands in front of the lands so owned: Provided, That if the abutting upland owner has attempted to convey by deed to a bona fide purchaser any portion of the tide or shore lands in front of such uplands, or littoral rights therein, such right of purchase herein given to the upland owner shall be construed to belong to such purchaser, or to any person, association or corporation claiming by, through or under such purchaser, to the extent of the tract or right so conveyed.

If at the expiration of sixty days from and after the filing of the final appraisal with the commissioner, there being no conflicting applications filed, the applicant shall be deemed to have the right of purchase at the appraised value.

If at the expiration of sixty days two or more applicants claiming a preference right to purchase have filed applications to purchase any tract, conflicting with each other, the commissioner shall forthwith require each applicant, within a time stated, to submit under oath a full statement of facts whereby he claims a preference right of purchase.

In case any applicant fails to file such statement within the time stated, he shall, unless good excuse is shown therefor, be deemed to have waived his claim to a right of purchase of the tract described in his application.

After such statements have been filed, if it is deemed advisable or necessary by the commissioner in order to determine the rights of the parties applying for such tract, he may order a hearing for that purpose.

The commissioner shall determine who has the first right of purchase to the whole, or any portion of the lot or tract involved, and shall, unless appeal is taken from his determination to the superior court of the county in which the land is situated, proceed to sell such lands in accordance with his determination.

In case of appeal the court after a hearing de novo shall enter an order determining the rights of the parties to the appeal and the commissioner shall proceed to sell the lands in accordance with the court's determination. [1927 ch. 255, Sec. 112; RRS Sec. 7797-112.]

79.16.290 Vacation by replat - Preference right of tideland owner. If any street, alley, waterway, or other public place theretofore platted is vacated by a replat as in RCW 79.16.270 and 79.16.280 provided and any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands between such new street, alley, waterway, or other public place, and tidelands theretofore sold, the owner of the tidelands theretofore sold shall have the preference right, for sixty days after the final approval of such replat, to purchase the unsold tidelands so intervening at the appraised value thereof. [1927 ch. 255, Sec. 116; RRS Sec. 7797-116.] (See pp. 145-146.)

79.16.340 Sale of shorelands of second class - Preference right of upland owner. Whenever application is made to purchase any shorelands of the second class or whenever the commissioner deems it for the best interests of the state to offer any shorelands of the second class for sale, he shall cause a notice to be personally served upon the abutting upland owner if he is a resident of this state, or if the upland owner is a nonresident of this state, shall mail to his last known post office address, a copy of a notice notifying him that application has been made

for the purchase of such shorelands or that the commissioner deems it for the best interest of the state to sell the same, as the case may be, giving a description and the appraised value of such shorelands in no case less than five dollars per lineal chain frontage and notifying such upland owner that he has a preference right to purchase said shorelands at the appraised value thereof for a period of thirty days from the date of the service or mailing of the notice, and no such shorelands shall be offered for sale, or sold, to any other person than the abutting upland owner until after the expiration of such thirty days from the date of the service or mailing of the notice. If the upland owner is a nonresident of this state and his address is unknown to the commissioner, notice to him shall not be necessary or required. If at the expiration of the thirty days from the service or mailing of the notice, as above provided, the abutting upland owner has failed to avail himself of his preference right to purchase and paid to the commissioner the appraised value of the shorelands described in the notice, then in that event the shorelands may be offered for sale and sold in the manner provided for the sale of state lands, other than capitol building lands. The commissioner may cause any of such shorelands to be platted as is provided for the platting of shorelands of the first class, and when so platted such lands shall be sold or leased in the manner herein provided for the sale or lease of shorelands of the first class. [1927 ch. 255, Sec. 121; RRS Sec. 7797-121.]

6. Annexation of Certain County Territory to Adjacent County

County

36.08.010 Petition and notice of election. If a harbor, inlet, bay, or mouth of river is embraced within two adjoining counties, and a city is located upon the shore of such harbor, bay, inlet, or mouth of river and it is desired to embrace within the limits of one county, the full extent of the shore line of the harbor, port, or bay, and the waters thereof, together with a strip of the adjacent and contiguous upland territory not exceeding three miles in width, to be measured back from high-water mark, and six miles in length, and not being at a greater distance in any part of said strip from the courthouse in the county seat of the county to which the territory is proposed to be annexed, as such county seat and courthouse are now situated, than ten miles, a majority of the qualified electors living in such territory may petition to have the territory stricken from the county of which it shall then be a part, and added to and made a part of the county contiguous thereto.

The petition shall describe with certainty the bounds and area of the territory, with the reasons for making the change and shall be presented to the board of county commissioners of the county in which the territory is located, which shall proceed to ascertain if the petition contains the requisite number of petitioners, who must be bona fide residents of the territory sought to be stricken off and transferred to the contiguous county.

If satisfied that the petition is signed by a majority of the bona fide electors of the territory, and that there will remain in the county from which it is taken more than four thousand inhabitants, the board shall make an order that a special election be held within the limits of the territory described in the petition, on a date to be named in the order.

Notices of the election shall contain a description of the territory proposed to be transferred and the names of the counties from and to which the transfer is intended to be made, and shall be posted and published as required for general elections. [1891 ch. 144, Sec. 1; RRS Sec. 3972.] ((See Art. 2, Sec. 28 (18) and Art. 11, Sec. 3 of Constitution of State of Washington.))

7. Sale of Tide or Shore Lands to Municipal Corporation or State Agency

City and State

Secs. 1 and 2, ch. 186, Laws of 1957 Sale of tide or shore lands to municipal corporation or state agency. Section 1. The commissioner of public lands, may with the advice and approval of the board of state land commissioners sell state owned tide or shore lands at the appraised market value to a municipal corporation or agency of the state of Washington when said land is to be used solely for municipal or state purposes.

Section 2. The commissioner of public lands shall with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to effect such sale or exchange.

8. Sale of Tide Lands Other Than First Class, Basis of Measuring of

79.16.330 Sale of tidelands other than first class. All tidelands, other than first class, shall be offered for sale and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of such tidelands, and each applicant shall furnish a copy of the United States field notes, certified to by the officer in charge thereof, of said meander line with his application, and shall pay one-tenth of the purchase price on the date of sale. [1927 ch. 255, Sec. 120; RRS Sec. 7797-120.]

9. Filing of Plats of Shore Lines by Logging and Timber Companies

76.28.010 Acquisition of property for booming, etc. - Eminent domain. Any corporation organized in the state for the purpose of catching, booming, sorting, rafting, and holding logs, lumber, or other timber products may acquire, hold, use and

transfer all such real and personal property, by lease or purchase, as shall be necessary for carrying on the business of the corporation. If the corporation is not able to agree with persons owning land, shore rights, or other property sought to be appropriated, as to the amount of compensation to be paid therefor, the compensation therefor may be assessed and determined and the appropriation made in the manner provided by law for the appropriation of private property by railways. Any property acquired under the provisions of this chapter by the exercise of the right of eminent domain shall be used exclusively for the purposes of this chapter, and whenever the use of the property as herein contemplated shall cease for a period of one year, it shall revert to the original owner, his heirs, or assigns. [1890 p 470 Sec. 1; RRS Sec. 8399.]

76.28.020, as amended by Laws of 1957, ch. 33 To file plat or survey of property rights proposed to be appropriated. Any corporation hereafter organized for the purpose mentioned in RCW 76.28.010, shall within ninety days after its articles of incorporation have been filed, file in the office of the supervisor of forestry a plat or survey of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated by the corporation. Such plat shall be made from the records of the United States Surveyor General, or by a competent surveyor, after actual survey. The corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in the original plat, or any portion of such streams or in any manner to change, modify, or correct its original plat, file additional plats or surveys in the office of the supervisor of forestry, of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for such purposes. Whenever, by reason of floods or otherwise, the channel of any stream is so changed as to put the stream beyond the limits of the original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, the corporation may file in the office of the supervisor of forestry additional plats or surveys showing the change in the channel and so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for its purposes by the corporation, which shall vest it with the same rights that it acquired by the filing of the original plat.

76.32.030, as amended by Laws of 1957, ch. 34 Plat or survey to be filed. Any corporation organized under this chapter shall within ninety days after its articles of incorporation have been filed, file in the office of the supervisor of forestry a plat or survey of so much of the shore lines of the waters of the state or of any of the rivers or streams thereof and

lands contiguous thereto as are proposed to be appropriated by the corporation. Such plat shall be made from the records of the United States Surveyor General or by a competent surveyor, after actual survey. The corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in the original plat, or any portion of such streams, file additional plats in the office of the supervisor of forestry. Whenever by reason of floods or otherwise, the channel of any stream is so changed as to put the stream beyond the limits of the original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, the corporation may file in the office of the supervisor of forestry supplemental plats showing the change in the channel which shall vest it with the same rights that it acquired by the filing of the original plat.

E. Ownership of Beds of Streams and Utilization of Streams for Logging and Removal of Rock, Gravel, Sand, and Silt

1. Logging

76.28.090 Streams declared public highways. All meandered rivers, meandered sloughs, and navigable waters in this state are public highways, and boom corporations are public corporations for the purposes of this chapter. The improvement of such streams, sloughs, and waters shall be deemed and declared a public use and benefit. [1890 p 473 Sec. 9; RRS Sec. 8407.]

In Watkins v. Dorris, 24 Wash. 636, 644-645, 64 Pac. 840 (1901), the Court observed that under RCW 76.28.090:

"All 'meandered rivers and meandered sloughs' shall be deemed as public highways for the purposes specified in the act [RCW 76.28.090], viz., booming and floating logs and timber. Nothing further is needed to establish them as public highways when it is shown that they are meandered. The section further provides that all 'navigable waters' shall be deemed as public highways for the same purpose. If the stream is not meandered, it must then be determined whether it is or is not navigable in fact for floating logs and timber. If navigable for such purpose, it is a public highway for that purpose."

The Court then observed that the state owns the bed of a stream only if it was navigable for general commercial purposes, but when a stream is nonnavigable, the title to the bed of the stream is in the riparian owners, but is "subject to the right of the public to use the stream for floating logs and timber." Persons using such a nonnavigable stream for the floating of logs have no right to interfere with the bed of the stream for the purpose of removing obstructions without the riparian owner's consent, or, by operation of law, without due compensation being made. (See Art. XVII, Sec. 1, Constitution of State of Washington).

79.16.530 Lease of beds of navigable waters for booming purposes. The commissioner of public lands may lease to the abutting tide or shore land owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in section 1, article XVII of the Constitution of the state, or in case the abutting tide or shore lands or the abutting uplands are not improved or occupied for residential or commercial purposes, may lease such beds to any person, firm or corporation for a period not exceeding ten years for booming purposes. Nothing in RCW 79.16.530 through 79.16.560 shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front thereof.[1953 ch. 164, Sec. 1.]

79.16.540 - Terms and conditions of lease - Forfeiture for nonuser. The commissioner of public lands shall, prior to the issuance of any lease under the provisions of RCW 79.16.530 through 79.16.560, fix the annual rental and prescribe the terms and conditions of the lease: Provided, That in the fixing of such annual rental the commissioner shall not take into account the value of any improvements heretofore or hereafter placed upon the lands by the lessee. No lease issued under the provisions of RCW 79.16.530 through 79.16.560 shall be for a longer term than thirty years from the date thereof if in front of second class tide or shore lands, or a longer term than ten years if in front of unplatted first class tide or shore lands leased under the provisions of RCW 79.16.090. Any lease of the bed of navigable waters in front of unplatted first class tide or shore lands, shall be subject to the same terms and conditions as provided in the lease of such unplatted first class tide or shore lands. Failure to use any lands leased under the provisions of RCW 79.16.530 through 79.16.560 for booming purposes for a period of two years shall work a forfeiture of the said lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the commissioner of public lands. [1953 ch. 164, Sec. 2.

79.16.550 - Improvements - Federal permit - Forfeiture - Plans and specifications. The applicant for a lease under the provisions of RCW 79.16.530 through 79.16.560 shall first obtain, from the United States army engineers or other federal regulatory agency, a permit to place structures or improvements in said navigable waters and file with the commissioner of public lands a copy of the said permit. No structures or improvements shall be constructed beyond a point authorized by the United States army engineers or the commissioner of public lands and any construction beyond authorized limits will work a forfeiture of all

rights granted by the terms of any lease issued under the provisions of RCW 79.16.530 through 79.16.560. The applicant shall also file plans and specifications of any proposed improvements to be placed upon such areas with the commissioner of public lands, said plans and specifications to be the same as provided for in the case of the lease of harbor areas. [1953 ch. 164, Sec. 3]

2. Removal of Rock, Gravel, Sand, and Silt

79.16.570 Sale of rock, gravel, sand and silt. The commissioner of public lands, upon application by any person, firm, or corporation, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand and silt located upon beds of navigable waters and any tidelands and shorelands owned by the state and providing for payment to be made therefor by such royalty as the commissioner may fix. [1955 ch. 386, Sec. 1.]

79.16.580 - Application - Terms of lease or contract - Bond - Payment - Reports. Each application made pursuant to RCW 79.16.570 hereof shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials. The commissioner of public lands may in his discretion include in any lease or contract entered into pursuant to RCW 79.16.570 through 79.16.590, such terms and conditions protecting the interests of the state as he may require. In each such lease or contract the commissioner of public lands shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties for periods therein stipulated, and he shall require a bond with a surety company authorized to transact a surety business in this state, as surety, to secure the performance of the terms and conditions of such contract or lease, including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the commissioner of public lands. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the commissioner of public lands and payment therefor made on the basis of the royalty provided in the lease or contract. [1955 ch. 386, Sec. 2.]

79.16.590 - Investigation, audit of books of person removing. The commissioner of public lands may inspect and audit books, contracts and accounts of each person removing rock, gravel, sand, or silt pursuant to any such lease or contract and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials. [1955 ch. 386, Sec. 3.]

F. Right of Way across for Various Purposes

79.16.176 - Access to and from tidelands. The director of State fisheries may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands herein described. [1955 ch. 387, Sec. 2.]

79.36.010 Lands subject to easements for removal of materials from other lands. All state lands, or tide and shore lands belonging to the state, granted, sold, or leased after the fifteenth day of June, 1911, containing timber, minerals, stone, sand, gravel, or other valuable materials, or when other state, tide or shore lands contiguous or in proximity thereto contain any such valuable materials, shall be subject to the right of the state, or any grantee or lessee thereof who has acquired such other lands, or any such valuable materials thereon, after the fifteenth day of June, 1911, to acquire the right-of-way over such lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased, upon the state, or its grantee or lessee, paying to the owner of the lands so granted or sold, or the lessee of the lands so leased, reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against railroad companies seeking to condemn private property. [1927 ch. 255, Sec. 78; RRS Sec. 7797-78.]

79.36.020 Private easement over public lands subject to common user in removal of materials. Every grant, deed, conveyance, contract to purchase or lease made after the fifteenth day of June, 1911, to any person, firm, or corporation, for a right-of-way for a private railroad, skid road, canal, flume, watercourse, or other easement, over or across any state lands, or tide or shore lands belonging to the state, for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel, or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired after the fifteenth day of June, 1911, any lands containing valuable materials contiguous to, or in proximity to, such right-of-way, or who has so acquired such valuable materials situated upon state lands, or tide or shore lands belonging to the state, contiguous to, or in proximity to, such right-of-way, to have such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse, or other

easement, and upon complying with just, reasonable, and proper rules and regulations relating to such transportation or use, which rates, rules, and regulations, shall be under the supervision and control of the public service commission. [1927 ch. 255, Sec. 79; RRS Sec. 7797-79.]

79.36.030 Reasonable facilities for transportation must be furnished. Any person, firm or corporation, having acquired such right-of-way or easement after the fifteenth day of June, 1911, over any state lands, or tide or shore lands belonging to the state, or over or across any navigable water or stream, for the purpose of transporting or moving timber, mineral, stone, sand, gravel, or other valuable materials, and engaged in such business thereon, shall accord to the state, or any grantee or lessee thereof, having after the fifteenth day of June, 1911, acquired from the state, any state lands, or tide or shore lands, containing timber, mineral, stone, sand, gravel, or other valuable materials, contiguous to or in proximity to such right-of-way or easement, or any person, firm or corporation, having after the fifteenth day of June, 1911, acquired the timber, mineral, stone, sand, gravel, or other valuable materials upon any state lands, or tide or shore lands belonging to the state, contiguous to or in proximity to the lands over which such right-of-way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right-of-way or other easement is not then in use, shall accord the use of such right-of-way or easement for transporting and moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor. [1927 ch. 255, Sec. 80; RRS Sec. 7797-80.]

79.36.060 Application for right-of-way - Appraisement of damage - Certificate. Any person, firm or corporation, engaged in the business of logging or lumbering, quarrying, mining or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right-of-way for the purpose of transporting or moving timber, minerals, stone, sand, gravel, or other valuable materials from other lands, over and across any state lands, or tide or shore lands belonging to the state, or any such lands sold or leased by the state after the fifteenth day of June, 1911, shall file with the commissioner upon a form to be furnished for that purpose, a written application for such right-of-way, accompanied by a plat showing the location of the right-of-way applied for with references to the boundaries of the government section in which the lands over and across which such right-of-way is desired are located. Upon the filing of such application and plat, the commissioner shall cause the lands embraced within the right-of-way applied for, to be inspected, and all timber thereon, and all damages to the lands

affected which may be caused by the use of such right-of-way, to be appraised, and shall notify the applicant of the appraised value of such timber and the appraisement of damages. Upon the payment to the commissioner of the amount of the appraised value of timber and damages, the commissioner shall issue in duplicate a right-of-way certificate setting forth the terms and conditions upon which such right-of-way is granted, as provided in RCW 79.36.010, 79.36.020, 79.36.030, 79.36.040 and 79.36.050, and providing that whenever such right-of-way shall cease to be used for the purpose for which it was granted, or shall not be used in accordance with such terms and conditions, it shall be deemed forfeited. One copy of such certificate shall be filed in the office of the commissioner and one copy delivered to the applicant. [1927 ch. 255, Sec. 83; RRS Sec. 7797-83.]

In State ex rel. Polson Logging Co. v. Superior Court, 11 Wn. (2d) 545, 119 P. (2d) 694 (1941) the Court observed that this statute provided the means for obtaining a right of way over state lands which would obviate the necessity of resort to eminent domain proceedings, and that the statutory method so provided is exclusive.

79.36.080 Right-of-way for roads and streets over public lands. Any county or city in the United States of America desiring to locate, establish, and construct a road or street over and across any state lands, or tide or shore lands belonging to the state, or any county desiring to construct any wharf on such tide or shore lands, shall by resolution of the board of county commissioners of such county, or city council or other governing body of such city, or proper agency of the United States cause to be filed in the office of the commissioner a petition for a right-of-way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county road or city engineer or proper agency of the United States, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right-of-way is desired, the amount of land to be taken and the amount of land remaining in each portion of each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the commissioner, if he deems it for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of any timber thereon and notify the petitioner of such appraised value.

If there is no timber on the proposed right-of-way, or upon the payment of the appraised value of any timber thereon, to the commissioner in cash, or by certified check drawn upon any bank in this state, or postal money order, the commissioner may approve the plat filed with the petition and file and enter the

same in the records of his office, and such approval and record shall constitute a grant of such right-of-way from the state. [1945 ch. 145, Sec. 1; 1927 ch. 255, Sec. 85; Rem. Supp. 1945 Sec. 7797-85.]

79.36.090 Railroad rights-of-way. A right-of-way through, over and across any state lands not held under a contract of sale, is hereby granted to any railroad company organized under the laws of this state, or any state or territory of the United States, or under any act of congress of the United States, to any extent not exceeding fifty feet on either side of the center line of any railroad now constructed, or hereafter to be constructed, and for such greater width as is required for excavations, embankments, depots, station grounds, passing tracks, or borrow-pits, which extra width shall not in any case exceed two hundred feet on either side of said right-of-way. [1927 ch. 255, Sec. 86; RRS Sec.7797-86.]

79.36.150 Right-of-way for utility pipe lines, transmission lines, etc. A right-of-way through, over, and across any state lands, or tide or shore lands belonging to the state, or oyster reserves belonging to the state and the reversionary interest of the state in oyster lands, which have been or may hereafter be established or arise, is hereby granted to any municipal or private corporation, company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipe line for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [1945 ch. 147, Sec. 1; 1927 ch. 255 Sec. 96; Rem. Supp. 1945 Sec. 7797-96.]

79.36.180 Right-of-way for irrigation, diking and drainage purposes. A right-of-way through, over and across any state lands or tide or shore lands belonging to the state is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association, individual, or the United States of America, constructing or proposing to construct an irrigation ditch or pipe line for irrigation, or to any diking or drainage district or any diking or drainage improvement district proposing to construct a dike or drainage ditch. [1945 ch. 147, Sec. 4; 1927 ch. 255 Sec. 99; Rem. Supp. 1945 Sec. 7797-99.]

79.36.230 Easement reserved in later grants for removal of materials, etc. All state lands granted, sold, or leased after June 8, 1927, shall be subject to the right of the state, or any grantee or lessee or successor in interest thereof hereafter acquiring other state lands, or acquiring the timber, stone, mineral, or other natural products thereon, or the manufactured products thereof, to acquire a right-of-way over such lands so granted, for logging or lumbering railroads, private railroads,

skid roads, flumes, canals, watercourses, or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral, or other natural products thereon, and the manufactured products thereof, from such state land, and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products over and across the lands so granted or leased, upon the state or its grantee or successor in interest thereof, paying to the owner of the lands so granted, sold, or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property. [1927 ch. 312, Sec. 1; RRS Sec. 8107 -1.]

79.36.240 Private easement over state lands subject to common user. Every grant, deed, conveyance, lease, or contract made after June 8, 1927, to any person, firm, or corporation over and across any state lands for the purpose of right-of-way for any logging or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement to be used in the hauling of timber, stone, mineral, or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable timber, stone, mineral, or other natural products of the land, to have such timber, stone, mineral, or other natural products, and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse, or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse, or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the public service commission. [1927 ch. 312, Sec. 2; RRS Sec. 8107-2.]

79.36.250 Easement over public lands subject to common user. Any person, firm, or corporation acquiring after June 8, 1927, a right-of-way or other easement over state lands or over any tide or shore lands belonging to the state, or over and across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral, or other natural products of the lands, and the manufactured products thereof and engaged in such

business thereon, shall accord to the state or any grantee or successor in interest thereof acquiring state lands containing valuable timber, stone, mineral, or other natural products of the land, or any person, firm, or corporation acquiring the timber, stone, mineral, or other natural products situate upon state lands, or the manufactured products thereof, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral, and other natural products of the land, and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products under reasonable rules and regulations upon payment of just and reasonable charges therefor, or, if such right-of-way or other easement is not then in use to have the right to use such right-of-way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 ch. 312, Sec. 3; RRS Sec. 8107-3.]

79.36.290 Applications - Appraisement - Certificate - Forfeiture. Any person, firm, or corporation shall have a right-of-way over public lands, subject to the provisions hereof, when necessary, for the purpose of hauling or removing timber, stone, mineral, or other natural products, or the manufactured products thereof, of the land. Before any such right-of-way grant shall become effective, a written application for and a plat showing the location of such right-of-way, with reference to the adjoining lands, shall be filed with the commissioner, and all timber on such right-of-way, together with the damages to the land, shall be appraised and paid for in cash by the applicant. The commissioner shall then cause to be issued in duplicate to the applicant a right-of-way certificate setting forth the conditions and terms upon which such right-of-way is granted. Whenever said right-of-way ceases to be used, for a period of two years, for the purpose for which it was granted, it shall be deemed forfeited, and the right-of-way certificate shall contain such a provision. One copy of each certificate shall be filed in the office of the commissioner and one copy delivered to the applicant. The forfeiture of a right-of-way shall be rendered effective by the mailing of notice of such forfeiture to the grantee thereof to his last known post office address and by stamping the copy of the certificate in the office of the commissioner canceled and the date of such cancellation. For the issuance of such certificate the same fee shall be charged as provided in the case of certificates for railroad rights-of-way. [1927 ch. 312, Sec. 6; RRS Sec. 8107-6.]

VI. PLATS AND SUBDIVISIONS

A. Recording, Acknowledging, and Filing of

43.12.110 Maps and plats - Record and index - Public inspec-

tion. All maps, plats, and field notes of surveys of state lands required to be made by any law, after approval by the board of state land commissioners,* of the commissioner of public lands, shall be deposited and filed in the office of the commissioner of public lands, who shall keep a complete record and index thereof in well-bound books, which shall at all times be open to public inspection. [1927 ch. 255, Sec. 187; RRS Sec. 7797-187.] *Now the Board of Natural Resources

County

58.08.010 Town plat to be recorded - Requisites. A person who lays out a town shall, before the sale of any lots therein, record in the office of the auditor of the county wherein the town lies, a plat thereof, showing any public grounds, and all streets, lanes, and alleys, with their respective widths properly marked, and the lots regularly numbered and the size thereof. [Code 1881 Sec. 2328; RRS Sec. 9288.]

The provisions for statutory dedication do not preclude a common-law dedication without the recording of any plat, two things only being necessary--the intention of the owner and an expressed or implied acceptance by the public. Seattle v. Hill, 23 Wash. 92, 62 Pac. 446 (1900).

This statute only applies to the original platter of the town, and any owner of a lot other than the original platter in an unrecorded plat does not have to record the plat prior to the sale thereof. Opsjon v. Engebo, 73 Wash. 324, 131 Pac. 1146 (1913).

Note: "Town" as used in this statute does not mean a municipality, such as a fourth-class municipality until the townsite has 300 or more inhabitants in the required area, and has complied with the laws of the state of Washington for incorporation.

City and County

58.08.020 Additions. A person laying out lots in an addition to any town shall, before the sale of such lots, have a plat thereof recorded the same as provided for recording the original plat of the town, and thereafter the lots shall be an addition to the town. [Code 1881 Sec. 2330; RRS Sec. 9289.]

City and County

58.08.030 Plats to be acknowledged - Certificate that taxes and assessments are paid. Every plat shall be acknowledged before the county auditor or any officer authorized to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to the plat and recorded therewith. A person desiring to file a plat, map, subdivision, or replat of any property, or to vacate the whole or any portion of an existing plat, map, subdivision, or replat, must at the time of filing the same for record, or of filing the petition to vacate, file therewith a certificate from the county treasurer that all taxes levied against the property at such date have been paid; and must also file therewith a certificate from the

officer charged with the collection of special assessments that all delinquent assessments against the property at such date, and that all special assessments against the property, which, under the plat filed, become streets, alleys, and other public places, have been paid. [1929 [1927] ch. 188, Sec. 1, last am'ds Code 1881 Sec. 2331; RRS Sec. 9290.]

City and County

58.08.040 Deposit to cover anticipated taxes. A person filing a plat after January 1st in any year and before the date for the collection of taxes, shall deposit with the county treasurer a sum equal to an increase of twenty-five percent of the amount of the tax for the previous year on the property platted. The treasurer's receipt for the amount shall be taken by the auditor as evidence of the payment of the tax. The treasurer shall appropriate so much of the deposit as will pay the taxes on the property when the tax rolls are placed in his hands for collection, and if the sum deposited is in excess of the amount necessary for the payment of the taxes, the treasurer shall return to the depositor the excess, taking his receipt therefor, which receipt shall be accepted for its face value on the treasurer's quarterly settlement with the county auditor. [1909 ch. 200, Sec. 1, last am'ds 1893 ch. 129, Sec. 2; RRS Sec. 9291.]

City and County

76.32.030 (See V. D. 9. supra, under Tide and Shore Lands.)

B. Approval by Cities and Counties

City and County

35.63.080 Restrictions on buildings - Use of land. The council or board may provide for the preparation by its commission and the adoption and enforcement of coordinated plans for the physical development of the municipality. For this purpose the council or board, in such measure as is deemed reasonably necessary or requisite in the interest of health, safety, morals and the general welfare, upon recommendation by its commission, by ordinance or resolution may regulate and restrict the location and the use of buildings, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings along highways, parks or public water frontages; and the subdivision and development of land. A council where such ordinances are in effect, may, on the recommendation of its commission provide for the appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent and in accordance with general or specific rules therein contained. [1935 ch. 44, Sec. 5; RRS Sec. 9322-5.]

In the interest of health, safety, morals, and general welfare, a county is authorized under Ch. 35.63 (the planning enabling act) to regulate the subdivision of two or more lots, to require conformance with platting and subdivision regulations and certain standards for access to property, and for the issuance of building permits as part of a comprehensive county plan. Att. Gen. Op., dated June 26, 1957.

58.16.010 Scope of chapter. The platting and subdividing of land into five or more lots or tracts, or containing a dedication of any part thereof as a public street or highway, shall be in compliance with the provisions of this chapter. [1937 ch. 186, Sec. 1; RRS Sec. 9304-1.] (See V. D. 9. supra, under Public Lands.)

Incorporated cities may regulate the platting and subdividing of two, three, or four lots providing the lot contains no dedication of a public street or highway under RCW 58.12.140 (1881 law) notwithstanding the provisions of Ch. 186, Laws of 1937, as amended (Ch. 58.16 RCW). A city may and must regulate the platting and subdividing of two or more lots or tracts where the plat contains a dedication of any part thereof as a public street or highway under the provisions of Ch. 186, Laws of 1937, as amended (Ch. 58.16 RCW). Att. Gen. Op., dated October 4, 1954

58.16.020 Approval required - Filing. Each plat, subdivision, or dedication, before any of its lots or tracts may be sold or offered for sale, shall be submitted for approval to the legislative or planning authority having jurisdiction thereof, and no sale or offer for sale shall be made until it has the written approval of such authority shown thereon or attached thereto and until it is filed for record with the auditor and a copy thereof shall be immediately furnished to the assessor of the county in which the land is located. [1951 ch. 195, Sec. 1; 1937 ch. 186, Sec. 2; formerly RRS Sec. 9304-2.]

City

58.16.030 Approval when inside city. If land proposed to be platted, subdivided, or dedicated is situated in a city or town, the proposal shall be submitted for approval to the legislative body of the city or town. If the city or town has a planning commission, the commission may take appropriate action thereon in lieu of the legislative body on behalf of the city or town. [1937 ch. 186, Sec. 3; RRS Sec. 9304-3.]

City and County

58.16.040 Approval when outside city. Proposed plats, subdivisions, and dedications of land outside of cities and towns shall be submitted for approval to the board of county commissioners of the county within which the land is situated. If the county has a planning commission, the commission may take appropriate action thereon on behalf of the county in lieu of the county commissioners: Provided, That when land proposed to be platted, subdivided, or dedicated is adjacent to or a part of

the suburban area of a city or town, before action thereon is taken by the county commissioners or county planning commission, notice of the pendency of the application shall be given to the legislative body or planning commission of the city or town to the end that it may be heard and the interests of the city or town protected, before a decision is made thereon: And provided, That proposed land plats located adjacent to the right of way of state highways, which are submitted for approval to the board of county commissioners, be presented to the director of highways for his review and consideration and for him to recommend to the board of county commissioners such matters which he deems necessary for inclusion before such proposed plat is approved by the board of county commissioners. [1951 ch. 203, Sec. 1; 1937 ch. 186 Sec. 4; formerly RRS Sec. 9304-4.]

City and County

58.16.050 Notice of hearing on application. When a proposed plat, subdivision, or dedication is submitted to a city or county authority, the clerk or secretary thereof shall at once cause, at the expense of the applicant, not less than three notices of a hearing thereof to be posted in conspicuous places on or near the land to be affected. The notice shall state the time and place where the hearing is to be held, and shall be posted not less than seven days before the hearing. The authority may also give such additional notice by mail as it deems requisite, to adjacent landowners or others. All hearings shall be open to the public. [1937 ch. 186 Sec. 6; RRS Sec. 9304-6.]

City and County

58.16.060 Inquiry as to public use and interest - Approval - Filing. The city, town, or county authority shall inquire into the public use and interest proposed to be served by the establishment of the plat, subdivision, or dedication. It shall see that appropriate provision is made in the plat or subdivision for streets and other public ways, parks, playgrounds, sites for schools and school grounds, and shall consider all other facts deemed by it relevant and designed to indicate whether or not the public interest will be served by the platting, subdividing, or dedication. If it finds that the plat, subdivision, or dedication makes appropriate provision for streets and other public ways, parks, playgrounds, sites for schools and school grounds, and that the public use and interest will be served by the platting, subdividing, or dedication, then it shall execute its written approval which shall be suitably inscribed on the plat, subdivision, or dedication. Upon compliance with the provisions of RCW 58.08.030 and 58.08.040 the plat, subdivision, or dedication shall be eligible for filing with the auditor of the county in which the land is located, and thenceforth it shall be known as an authorized plat, subdivision, or dedication of the land. The original shall be filed with the county auditor and two copies with the county assessor, one of which shall be forwarded

by the assessor to the state tax commission. [1955 ch. 299, Sec. 1; 1951 ch. 195 Sec. 2; 1937 ch. 186 Sec. 7; RRS Sec. 9304-7.]

RCW 58.16.060 (1955 Supp.) requires that neither the owner of property to be platted donate land for school purposes, nor that he hold such land in reserve so as to be available for public purchase, but merely that sites needed for school use be indicated before a proposed plat is approved. The words, "appropriate provision," in this statute mean that the city, town, or county authority having jurisdiction of the approval of plats and subdivisions is required to consider the school needs of the area concerned at the time it approves the plat or subdivision. Where it finds that a school is needed, this should be indicated before the plat is approved. This property can only be acquired from the owner thereof by the ordinary process of eminent domain. Att. Gen. Op., dated December 20, 1955.

City and County

58.16.070 Time for determination. The proposed plat, subdivision, or dedication shall be approved, disapproved, or returned to the applicant for modification or correction by the city, town, or county authority within sixty days from the date of filing thereof unless the applicant has filed written consent for a longer period in which to act thereon. [1937 ch. 186, Sec. 8; RRS Sec. 9304-8.]

58.16.080 Review of determination. A decision approving or refusing to approve a plat, subdivision, or dedication may be reviewed for arbitrary, capricious, or corrupt action or nonaction, by writ of review before the superior court of the county in which the matter is pending, by any property owner of the city, town, or county. Application for the writ shall be made to the court within thirty days from the date of the decision to be reviewed. [1937 ch. 186, Sec. 9; RRS Sec. 9304-9.]

City and County

58.16.090 Filing without approval - Procedure. The county auditor shall refuse to accept for filing any plat, subdivision, or dedication until approval thereof has been given by the appropriate city, town, or county authority. Should a plat, subdivision, or dedication be filed without approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate to the superior court in the name of and on behalf of the city, town, or county authority required to approve, requiring the auditor and assessor to remove from their files or records the plat, subdivision, or dedication. The costs of the action shall be taxed against the auditor. [1951 ch. 195, Sec. 3; last am'ds 1937 ch. 186, Sec. 10; formerly RRS Sec. 9304-10.]

58.16.100 Sales before plat approved and filed - Penalty - Exception. The owner or agent of the owner of land located in a plat or subdivision, who transfers or sells, or agrees to sell or option any land by reference to or exhibition of or by any

other use of a plat or map of a subdivision, before it has been approved and filed shall forfeit and pay a penalty of one hundred dollars for each lot or parcel so transferred, or sold or agreed or optioned to be sold. The description of the lot by metes and bounds in the instrument of transfer, agreeing or optioning, shall not exempt the transaction from the penalty, or from the remedies herein provided. The city, town, or county authority may enjoin the transfer, sale agreement, or option by action in the superior court, or may recover the penalty in a civil action: Provided, That such owner or his agent may without penalty file any contract of sale and/or deed transferring land when the contract was entered into prior to the year 1945, and the county auditor may accept the same for filing without penalty if such contract and/or deed are first submitted to the procecutor secuting attorney of the county concerned and such prosecuting attorney finds that any noncompliance with the provisions of chapter 58.16 was due to error or inadvertence and that such filing will not disturb the existing pattern of platting, subdivision or dedication as to the whole area of land concerned. [1951 ch. 224, Sec. 1; 1937 ch. 186 Sec. 11; formerly RRS Sec. 9304-11.]

County and City

58.16.110 Regulations. To effectuate the policy of this chapter, every legislative or planning authority charged with the duty of passing upon and giving or withholding approval of plats, subdivisions, and dedications shall establish reasonable regulations, with the continuing right of amendment thereof, controlling the form of plats, subdivisions, and dedications to be filed, the minimum width of streets and alleys, the minimum lot or tract area, street arrangement, provision for improvement of streets and public places and for water supply, sewerage and other public services, dedications of parks, playgrounds, and other public places. [1937 ch. 186, Sec. 5, part; RRS Sec. 9304-5, part.]

County and City

58.16.120 Regulations - Approval. In order that there may be consultation tending toward a reasonable degree of uniformity in the regulations, the legislative or planning authority shall submit to the director of conservation and development [now to the director of Commerce and Economic Development] at least sixty days in advance of final adoption, its proposed regulations, and shall file with him a copy of the regulations as finally established. Thereafter amendments thereto shall be likewise submitted to the director not less than ten days before final adoption and there shall also be filed with him a copy of each amendment as finally established by it. [1937 ch. 186, Sec. 5, part; RRS Sec. 9304-5, part.]

The functions of the Washington State Planning Council, which was abolished in 1945, were transferred at that time to the Division of Progress and Industry Development of the state

Department of Conservation and Development. (Laws, 1945, Ch. 173) From and after April 1, 1957, the said Division was abolished and the powers, duties, and functions theretofore exercised by said Division in the Department of Conservation and Development are to be exercised by the director of the Department of Commerce and Economic Development. (The Department of Conservation and Development is now designated the "Department of Conservation.") Laws, 1957, Ch. 215, Secs. 17-20

County and City

58.16.130 Surveys - Notes and sketches. No plat, subdivision, or dedication shall be approved unless accompanied by a complete survey of the section in which it is located, with complete field and computation notes showing original or reestablished corners, with description of them and actual traverse showing error of closure and method of balancing, with sketch showing all distances, angles, and calculations required to determine corners and distances of the plat. The allowable error of closure shall not exceed one foot in four thousand feet. [1937 ch. 186 Sec. 5, part; RRS Sec. 9304-5, part.]

(See Laws, 1909, ch. 231; Rem. Rev. Stat. Secs. 11485 - 11536 relating to Survey and Platting of Public Lands in Cities and Towns.)

C. Annexation

City

35.13.200 Federal Areas, 2nd and 3rd Class Cities - Annexation ordinance - Provisions. In the ordinance annexing territory pursuant to a gift, grant, or lease from the government of the United States, a second or third class city or town may include such tide and shore lands as may be necessary or convenient for the use thereof, may include in the ordinance an acceptance of the terms and conditions attached to the gift, grant, or lease and may provide in the ordinance for the annexed territory to become a separate ward of the city or town or part or parts of adjacent wards.[(i) 1915 ch. 13, Sec. 1, part; RRS Sec. 8906, part. (ii) 1915 ch. 13, Sec. 2, part; RRS Sec. 8907, part.]

City

35.13.210 Same - Authority over annexed territory. A second or third class city or town may cause territory annexed pursuant to a gift, grant, or lease of the government of the United States to be surveyed, subdivided and platted into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places. It may grant or sublet any lot, block, or tract therein for commercial, manufacturing, or industrial purposes and reserve, receive and collect rents therefrom. It may expend the rents received therefrom in making and maintaining public improvements therein, and if any surplus remains at the end of any fiscal year, may transfer it to the city's or town's current expense fund. [1915 ch. 13, Sec. 2, part; RRS Sec. 8907, part.]

Town

35.27.020 Annexation of unplatted lands - Consent. No more than twenty acres of unplatted land belonging to any one person shall be taken into the limits of municipal corporations of the fourth class without the consent of the owner thereof. [1951 ch. 109, Sec. 1; 1890 p 141 Sec. 15; formerly RRS Sec. 8935.]

D. Platting for Cemeteries and/or Parks

(Third Class) City

35.24.300 Additional powers - Acquisition of property for municipal purposes. The city council of such city shall have power to purchase, lease, or otherwise acquire real estate and personal property necessary or proper for municipal purposes and to control, lease, sublease, convey or otherwise dispose of the same; to acquire and plat land for cemeteries and parks and provide for the regulation thereof; to lease any waterfront and other lands adjacent thereto owned by it for manufacturing, commercial or other business purposes; to lease for wharf, dock and other purposes of navigation and commerce such portions of its streets which bound upon or terminate in its waterfront or the navigable waters of such city, subject, however, to the written consent of the lessees of a majority of the square feet frontage of the harbor area abutting on any street proposed to be so leased. No lease of streets or waterfront shall be for longer than ten years and the rental therefor shall be fixed by the city council. Every such lease shall contain a clause that at intervals of every five years during the term thereof the rental to be paid by the lessee shall be readjusted between the lessee and the city by mutual agreement, or in default of such mutual agreement that the rental shall be fixed by arbitrators to be appointed one by the city council, one by the lessee and the third by the two thus appointed. No such lease shall be made until the city council has first caused notice thereof to be published in the official newspaper of such city at least fifteen days and in one issue thereof each week prior to the making of such lease, which notice shall describe the portion of the street proposed to be leased, to whom, for what purpose, and the rental to be charged therefor. The city may improve part of such waterfront or street extensions by building inclines, wharves, gridirons and other accommodations for shipping, commerce and navigation and may charge and collect for service and use thereof reasonable rates and tolls. [1915 ch. 184, Sec. 15; RRS Sec. 9128.]

Town

35.27.370 Specific powers enumerated. . . . (2) To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of and convey the same for the benefit of the town; to acquire, own, and hold real estate for cemetery purposes either within or without the corporate limits, to sell and dispose of

such real estate, to plat or replat such real estate into cemetery lots and to sell and dispose of any and all lots therein, and to operate, improve and maintain the same as a cemetery: Provided, That they shall not have the power to sell or convey any portion of any waterfront.

E. Legalizing, Correcting, Regulating, and Changing

58.08.060 Effect of donation marked on plat. Every donation or grant to the public, or to any individual, religious society, or to any corporation or body politic, marked or noted as such on the plat of a city or town, or wherein the donation or grant was made, shall be considered, to all intents and purposes, as a quitclaim deed to the donee or grantee for his use, for the purposes intended by the donor or grantor. [Code 1881 Sec. 2329; RRS Sec. 9310.]

58.08.070 Certified copy of plat as evidence. A copy of a city or town plat or addition thereto, certified by the county auditor in whose office it is recorded, to be a true and complete copy of the record thereof, shall be admissible in evidence in any court of the state with the same effect as the original. [Code 1881 Sec. 2339; RRS Sec. 9307.]

58.08.080 Defective plats legalized. All city and town plats and additions thereto recorded before the effective date of the Code of 1881 shall be conclusive evidence of all matters shown therein, and of the dedication to public use of all streets, alleys, and public grounds appearing thereon, regardless of whether made, executed, or acknowledged according to law. [Code 1881 Sec. 2338; RRS Sec. 9306.]

58.12.010 Petition to change plat - Plat of proposed change. The owners of three-fourths in number and area of any town site, city plat or plats, addition or additions or part thereof, may file a petition with the clerk of the governing body having jurisdiction over the establishment, vacation, and control of the streets affected thereby, praying that the plat, addition, or part thereof be altered, replatted, or vacated. The petition shall be accompanied by a plat, drafted on a copy of the existing plat, showing the proposed alteration, replat, or vacation: Provided, That this section shall not apply to state granted, tide, or shore lands. [1927 ch. 139 Sec. 1; 1903 ch. 92 Sec. 1; RRS Sec. 9311.]

The council has no power under this statute to modify the proposed replat presented in the petition, but must approve or reject the identical plat presented in its entirety, and an order approving only part of the vacation petitioned for is void. Brazell v. Seattle, 55 Wash. 180, 104 Pac. 155 (1909).

The exclusive right to make replats of state granted tide or shore lands is vested in the state Commissioner of Public Lands. Petersen v. Seattle, 191 Wash. 587, 71 P. (2d) 668 (1937).

58.12.020 Time and place of hearing - Notice. Upon the payment of the cost thereof the clerk shall fix a time for the hearing of the petition, which shall not be less than thirty nor more than sixty days after the filing, and shall cause a notice to be issued under his hand and the seal of the county or city, stating by whom and when the petition was filed, the object thereof, and when and where the petition will be heard. The notice shall also describe the property sought to be altered, replatted, or vacated. [1903 ch. 92, Sec. 2; RRS Sec. 9312.]

58.12.030 Notice - Service. The clerk shall serve the notice in the manner of summons in civil actions, upon all the owners of property not joining in the petition, as shown by the records in the auditor's office of the county wherein the plat or addition is located. [1903 ch. 92, Sec. 3; RRS Sec. 9313.]

58.12.040 Hearing - Determination and order. Thereafter the board of county commissioners or the city council having jurisdiction shall inquire into and determine the merits of the relief prayed for, assess damages or benefits, award them, and make such order as justice and the public welfare require. [1903 ch. 92, Sec. 4; RRS Sec. 9314.]

58.12.050 Assessment district - Damages and benefits. All of the land in the plat proposed to be altered, replatted, or vacated shall constitute an assessment district, and damages shall be assessed and benefits awarded as now provided for the establishment, alteration, or vacation of streets, alleys, and roads by the county commissioners and city council. [1903 ch. 92, Sec. 5; RRS Sec. 9315.]

58.12.060 New plat to be filed - Order of vacation. A plat or replat so adjudicated, adjusted, and approved, showing the lines of the original and adjudicated plat, shall be filed and recorded with the auditor of the county where the property is situated, and shall thereafter be the lawful plat. Should the plat, addition, or parts thereof, be vacated and not otherwise altered or replatted, it shall only be necessary to file with the county auditor the order, resolution, or ordinance vacating the same, and the auditor shall thereupon note upon the original plat the part so vacated. [1909 ch. 136, Sec. 1; 1903 ch. 92, Sec. 6; RRS Sec. 9316.]

58.12.070 Appeal. Owners of any portion of the property affected by the award or final judgment of the county commissioners or city council may appeal to the superior court in the same manner as appeals from justice courts are taken. [1903 ch. 92, Secs. 7, 8; RRS Sec. 9317.]

58.12.080 Construction of chapter. Nothing herein shall affect the power now vested in a board of county commissioners or city council to vacate streets and alleys and parts thereof. [1903 ch. 92, Sec. 9; RRS Sec. 9318.]

City

58.12.130 Resurvey and corrected plat. If the recorded plat of a city, or addition thereto, does not definitely show the location or size of lots or blocks, or the location or width of

any street or alley, the city council may by ordinance, and the action of its proper officers, cause a new survey and plat of the city or addition to be made and recorded in the office of the county auditor. The corrected plat shall follow the plan of the original survey and plat, so far as it can be ascertained and followed, and a certificate of the officer or surveyor making it shall be indorsed thereon, referring to the original plat corrected thereby, and the defect existing therein, and corrected by the new survey and plat. The ordinance authorizing the making of the plat shall be recorded in the office of the county auditor and the certificate shall show where the ordinance is recorded. [Code 1881 Sec. 2340; RRS Sec. 9308.]

City

58.12.140 Regulation of surveys and plats. All incorporated cities and towns may regulate and prescribe the manner and form of making any future survey or plat of land within their limits, and enforce such regulations by a fine of not exceeding one hundred dollars, to be recovered in the name of the city or town, or by imprisonment not exceeding twenty days, for each violation of any ordinance regulating the survey and platting. Nothing in this or RCW 58.12.130 shall apply to additions to cities or towns in which no lots have been sold. [Code 1881 Sec. 2341; RRS Sec. 9309.]

A city may, pursuant to RCW 58.12.140 (1881 law) require an owner who desires to plat land (or to change the boundary lines thereof) containing less than five lots, without a dedication of a public highway or street, to present a proposed plot plan showing the proposed rearrangement of his property for approval by the city before the sale of such land may be consummated. (See annotation under RCW 35.63.080.) A property owner using a "map" of a subdivision in connection with the sale of less than five lots, without a dedication of a highway or street, approved under the authority of RCW 58.12.140, would not violate Sec. 1, ch. 224, Laws of 1951 (RCW 58.16.100), which requires that a plat or map be approved before it may be referred to or exhibited to prospective buyers. Att. Gen. Op., dated October 4, 1954.

F. Platting of Irregular Subdivided Tracts

County

84.40.170 Plat of irregular subdivided tracts. In all cases of irregular subdivided tracts or lots of land, other than any regular government subdivision, the county assessor shall outline a plat of such tracts or lots, and notify the owner thereof to have the same surveyed by the county engineer, and platted into numbered or lettered lots or tracts: Provided, That where any county has in its possession the correct field notes of any such tract or lot of land a new survey shall not be necessary, but such tracts may be mapped from such field notes.

In case the owner of such tracts or lots neglects or refuses to have the same surveyed or platted, the county assessor

shall notify the board of county commissioners of the county, who may direct the county engineer to make the proper survey and plat of the tracts and lots. A plat shall be made on which the tracts or lots shall be accurately described by lines, and numbered or lettered, which numbers or letters together with number of the section, township, and range shall be distinctly marked on such plat, and the field notes of all such tracts or lots shall describe each tract or lot according to the survey, and each tract or lot shall be numbered or lettered to correspond with its number or letter on the map. The plat shall be given a designated name by the surveyor thereof. When the survey, plat, field notes, and name of plat have been approved by the board of county commissioners, the plat and field notes shall be filed and recorded in the office of the county auditor, and the description of any tract or lot of land described in said plats by number or letter, section, township, and range, shall be a sufficient and legal description for revenue and all other purposes. [1925 ex.s. ch. 130, Sec. 53; RRS Sec. 11136.]

G. Platting and Replatting of Tide and Shore Lands - Commissioner of Public Lands

1. Platting

City and State

Secs. 1 and 2, ch. 148, Laws of 1957 Survey and Platting of Shorelands at Clarkston. Section 1. The commissioner of public lands is hereby directed to survey and plat the first class shorelands of Clarkston in accordance with present state statutes; and to select for the use of the public out of such shorelands, sites for streets, avenues, alleys, waterways and other purposes insofar as such shorelands may be available for any and all such purposes.

Section 2. There is hereby appropriated from the general fund for the commissioner of public lands the sum of five thousand dollars, or so much thereof as may be necessary, for the purpose of making necessary surveys and plats and other work incident to carrying out the purposes and provisions of this act.

2. Replatting

79.16.270 Petition for replat - Replatting and reappraisement. Whenever all of the owners and other persons having a vested interest in the lands embraced within any plat of tide or shore lands of the first class, heretofore or hereafter platted or replatted, or within any portion of any such plat in which there are unsold tide or shore lands belonging to the state, shall file a petition with the commissioner accompanied by proof of service of such petition upon the city council, or other governing body, of the city or town in which the tide or shore lands described in the petition are situated, or upon the board of county commissioners of the county in which such tide or shore lands outside of any incorporated city or town are situated, asking for a replat of such tide or shore lands, the commis-

sioner may replat the tide or shore lands described in such petition, and all unsold tide or shore lands within such replat shall be reappraised as provided for the original appraisement of tide or shore lands. All streets, alleys, waterways, and other public places embraced within any such plat or portion of plat vacated by the replat hereby authorized shall vest in the owner or owners of the lands abutting thereon. [1927 ch. 255, Sec. 114; RRS Sec. 7797-114.]

79.16.280 Dedication of replat - All interests must join. If, in the preparation of such replat by the commissioner, it becomes desirable to appropriate any tide or shore lands heretofore sold, for use as streets, alleys, waterways, or other public places, all persons interested in the title to such tide or shore lands desired for public places shall join in the dedication of such replat before it shall become effective. [1927 ch. 255, Sec. 115; RRS Sec. 7797-115.]

79.16.320 Effect of replat. Any replat of tide or shore lands heretofore or hereafter platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other public places theretofore dedicated and the dedication of new streets, alleys, waterways, and other public places appearing upon such replat, when the same is recorded and filed as in the case of original plats. [1927 ch. 255, Sec. 119; RRS Sec. 7797-119.]

H. Plat of Limits of City as Modified

City

35.16.050 Recording of ordinance and plat on effective date of reduction. Immediately upon the ordinance defining the reduced city or town limits going into effect, a certified copy thereof together with a map showing the corporate limits as altered shall be filed and recorded in the office of the county auditor of the county in which the city or town is situated, and thereupon the boundaries shall be as set forth therein. [1895 ch. 93, Sec. 3; RRS Sec. 8904.]

I. Platting, Subdividing, and Disposing of State Public Lands on Federal Reclamation Projects

State

89.12.140 Subdivision and sale of state lands in project. The commissioner of public lands may cooperate with the secretary with a view to facilitate the execution of plans approved by the secretary for subdivision and disposal of land under federal reclamation projects authorized by the federal reclamation laws, in farm units bounded by lines considered more economical and convenient for irrigation and reclamation than the lines of legal subdivisions and for such purpose may prepare and file a plat of any state lands in the project showing the lands subdivided into blocks, lots, or farm units, with boundary lines other than those of legal subdivisions, and located with a view to greater convenience, economy, or efficiency in irrigation and

reclamation, and the subdivision may be made in harmony with any general plan approved by the secretary for subdivision of the lands of the project or any part thereof into blocks, lots, or farm units with boundary lines other than the lines of legal subdivisions and designed for more convenient, economical, or efficient reclamation and irrigation. The commissioner may offer for sale and sell such state lands in the lots, blocks, or farm units designated on the plat instead of offering and selling them in legal subdivisions. [1927 ch. 246, Sec. 1; RRS Sec. 7402-280.]

VII. STREETS, ALLEYS, HIGHWAYS, AND WATERWAYS

A. Municipalities

1. Streets Are Public Highways

City

58.08.050 Platted streets as public highways. When a city or town has been surveyed and platted, and a plat thereof showing the roads, streets, and alleys has been filed in the office of the auditor of the county in which the city or town is located, the plat shall be the official plat of the city or town, and all roads, streets, and alleys in the city or town, as shown by the plat, shall be public highways: Provided, That nothing herein shall apply to any part of a city or town that has been vacated. [Code 1881, Sec. 3049; RRS Sec. 9292.]

The public control of streets and highways in this state does not amount to an ownership of the fee under this section and RCW 58.08.060 supra, which declare the effect and purpose of dedication of city lots. Schwede v. Hemrich Bros. Brewing Co., 29 Wash. 21, 69 Pac. 362 (1902).

Alleys in a city which are platted and dedicated to public use, are as much public highways as the streets herein. Ferguson v. Yakima, 139 Wash. 216, 246 Pac. 287 (1926).

There are two things which are absolutely essential to a valid common law dedication: (1) An intention on the part of the owner to devote his land, or an easement in it, to a public use, followed by some act or acts clearly and unmistakably evidencing such intention; and (2) an acceptance of the offer by the public. In making a dedication, no particular formalities are necessary. The intention to make a dedication may be shown by particular acts of the owner, such as throwing open his land to public travel, or platting it and selling lots with reference to the plat, or acquiescing in, or positively assenting to, its use by the public, or by any act positively and unequivocally indicating such intention. Seattle v. Hill, 23 Wash. 92, 62 Pac. 446 (1900).

2. Validation of Streets, Waterways, and Public Places

City and State

79.16.210 Streets, waterways, etc., validated. All alleys, streets, avenues, boulevards, waterways, and other public places heretofore located and platted on the tide and shore lands of

the first class, or harbor areas, and not heretofore vacated as provided by law, are hereby validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject however to vacation as in RCW 79.16.270 - 79.16.320 provided. [1927 ch. 255, Sec. 108; RRS Sec. 7797-108.]

In Petersen v. Seattle, 191 Wash. 587, 71 P. (2d) 668 (1937), the State Supreme Court of Washington held ch. 35.79 RCW which confer power on cities and towns to vacate any street or alley upon petition of two-thirds of the owners of private property abutting thereon, was not impliedly repealed with respect to tide land areas by RCW 79.04.010 et seq.

3. Validation of Leases on Vacant Streets on Waterfront

City

Sec. 1, ch. 52, Laws of 1899 Validation of leases of vacant streets on waterfront. Whenever the council of any city or town has heretofore by resolution or ordinance, or either, or both, found that any street or streets, or specified portions thereof, upon the waterfront, within or in front of such city or town, are imaginary streets, existing only upon maps or plats, and that the same in the portions specified have never been opened for public travel or improved as public highways, and that it will be for the best interest of such city or town, its trade or commerce, not to take possession of or improve any such street or specified portions thereof, and that the closing of such street or specified portions thereof for a period therein provided, and the occupancy of the space so closed by persons, or corporations for the purpose of trade, commerce, navigation, transportation, manufactures, or other industries, will be without injury to any public or private interest, but will be of great benefit to the public and such community, and therein authorizing such occupancy for such purposes, for the period therein specified, such resolutions, ordinances, and the action of the council of such city or town as therein determined and set forth are hereby validated: Provided, That this shall not be construed as validating any such lease for a longer term than thirty years from the date of the commencement of the term mentioned in such lease: And provided further, That this section shall not apply to cities of the first class. [Rem. Rev. Stat. Sec. 9296.]

4. Upon or across Tide and Shore Lands

City

35.21.230 Streets over tidelands declared public highways. All streets in any incorporated city or town in this state, extending from high tide into the navigable waters of this state, are hereby declared public highways. [1890 p 733, Sec. 1; RRS Sec. 9293.] (See Const. Art. XV, Sec. 3, re right to extend streets over tide lands.)

City

35.21.240 Streets over tidelands - Control of. All streets

declared public highways under the provisions of this and RCW 35.21.230 shall be under the control of the corporative authorities of the respective cities. [1890 p 733, Sec. 2; RRS Sec. 9294.]

City

35.21.250 Streets and alleys over first class tidelands - Control of. All streets and alleys, which have been heretofore or may hereafter be established upon, or across tide and shore lands of the first class shall be under the supervision and control of the cities within whose corporate limits such tide and shore lands are situated, to the same extent as are all other streets and alleys of such cities and towns. [1901 ch. 149, Sec. 1; RRS Sec. 9295.]

The extensions of the streets across the tide and shore lands must be in a direct line with, and the same width as, the existing streets being extended. Ilwaco v. Ilwaco Railway and Navigation Co., 17 Wash. 652, 50 Pac. 572 (1897).

After a city once exercises its right to extend its streets over the tide or shore lands and extends only every other street, the city is thereafter precluded from extending the remaining streets. State ex rel. Gatzert-Schwabacher Land Co. v. Bridges, 19 Wash. 428, 53 Pac. 547 (1898).

5. Vacation of Streets

(First Class) City

35.22.280 Specific powers enumerated....(37) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce.

(Second Class) City

35.23.440 Specific powers enumerated....(55) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

City

35.79.010, as amended by Laws of 1957, ch. 156, Sec. 2 Petition by owner - Fixing time for hearing. The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure. The petition or resolution shall be filed with the city or town clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution.

The owner of business property in a city cannot object to

the vacation of a street upon which his property does not abut, where the only practical effect it would have upon his ingress and egress would be the deflection one block east or west of the travel coming from the residential district. Mottmon v. Olympia, 45 Wash. 361, 88 Pac. 579 (1907).

When the closing of the street or highway operates to close the only passageway a property owner has from his property to the main public ways, such an owner may properly challenge the action by litigation even though he is not an abutting property owner. Smith v. Centralia, 55 Wash. 573, 104 Pac. 797 (1909).

City

35.79.020, as amended by Laws of 1957, ch. 156, Sec. 3 Notice of hearing. Upon the passage of the resolution the city or town clerk shall give twenty days' notice of the pendency of the petition by a written notice posted in three of the most public places in the city or town and a like notice in a conspicuous place on the street or alley sought to be vacated. The said notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition. In all cases where the proceeding is initiated by resolution of the city or town council or similar legislative authority without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, in addition to the notice hereinabove required, there shall be given by mail at least fifteen days before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address thereon shown: Provided, That if fifty per cent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of hearing, the city shall be prohibited from proceeding with the resolution.

City

35.79.030, as amended by Laws of 1957, ch. 156, Sec. 4 Hearing - Ordinance of vacation. The hearing on such petition may be held before the legislative authority, or before a committee thereof upon the date fixed by resolution or at the time said hearing may be adjourned to. If the hearing is before such a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If such hearing be held before such a committee it shall not be necessary to hold a hearing on the petition before such legislative authority. If the legislative authority determines to grant said petition or any part thereof, such city or town shall be authorized to have authority by ordinance to vacate such street, or alley, or any

part thereof: Provided, That such ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services.

City

35.79.040 Title to vacated street or alley. If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each. [1901 ch. 84, Sec. 3; RRS Sec. 9299.]

When an owner plats lands bounded by a street included in his plat and owns nothing beyond the street and conveys all his land abutting on the street without reservation, the purchaser acquires the fee to the whole street. Rowe v. James, 71 Wash. 267, 128 Pac. 539 (1912).

City

35.79.050 Vested rights not affected. No vested rights shall be affected by the provisions of this chapter. [1901 ch. 84, Sec. 4; RRS Sec. 9300.]

6. Vacation of Lots, Unimproved Towns, or Additions

58.12.090 Vacations in unincorporated towns - Petition - Notice. Any person interested in any town not incorporated, who may desire to vacate any lot, street, alley, common, or any part thereof, or any public square, or part thereof, in any such town, may petition the board of county commissioners for the proper county. The petition shall set forth the facts pertinent thereto, with a description of the property to be vacated, and shall be filed in the office of the county auditor. The auditor shall give notice of the time and place of hearing on the petition before the commissioners, by posting notice thereof, containing a description of the property to be vacated, in three of the most public places in said town, at least twenty days before the hearing. [1953 ch. 114, Sec. 1. Prior: Code 1881 Sec. 2333; RRS Sec. 9301.] (See RCW 36.87.010 and 36.87.090 infra.)

58.12.100 Hearing and order. The board, if satisfied that the required notice has been given and that the facts warrant, may vacate the property as prayed upon such conditions and restrictions as it may deem reasonable and for the public good. [Code 1881, Sec. 2334; RRS Sec. 9302.]

58.12.110 Title to vacated property. If the property vacated is a lot, title thereto shall vest in the rightful owner. If it is a street or alley, it shall be attached to the lots or grounds bordering thereon, and all right or title thereto shall vest in the person owning the property on each side thereof, in equal proportions: Provided, That the lots or grounds so bordering on the street or alley have been sold by the original owner. If the original owner possesses the title to the lots or grounds bordering the street or alley on one side only, the title shall

vest in the owner, if the board shall judge it to be just and proper. [Code 1881 Sec. 2335; RRS 9303.]

58.12.120 Vacation of platted lots outside municipalities. The owner of all the lots in a platted area or addition thereto, outside an incorporated city or town, which does not improve, may have the area or addition or any part thereof vacated in the same manner as above provided for the vacation of public places outside a city or town. [Code 1881 Sec. 2337; RRS Sec. 9305.]

7. Waterways

79.16.310 Vacation of waterways - Extension of streets. Whenever any waterway established under the authority of the law of this state, or any portion thereof has not been excavated, or is not in use for the purposes of navigation, or is no longer required in the public interest as a waterway, such waterway or portion thereof may be vacated by written order of the commissioner whenever he shall be requested so to do by ordinance or resolution of the city council of the city in which the waterway is situate, in whole or in part, or, in case the waterway is situate, in whole or in part, in a port district organized under the laws of the state, whenever he shall be requested so to do by resolution of the port commission of such port district; and upon the making of such order the waterway or portion thereof shall be thereby vacated: Provided, That if the waterway or portion thereof so vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of such resolution or ordinance, together with a copy of the order of the commissioner certified to by him shall be submitted to the Secretary of War and chief of engineers of the United States for their approval, and if they approve the same such waterway or portion thereof shall be thereupon vacated.

Upon such vacation occurring, in either of the manners aforesaid, the commissioner shall notify the city within, or in front of, which, the waterway is located, and the city shall have the right to extend across the portions so vacated any existing streets, or to select therefrom such portions thereof as the city may desire for street purposes, in no case to exceed one hundred and fifty feet in width for any one street. Such selection shall be made within sixty days after the receipt of notice of the vacation of the portion of the waterway so vacated.

Should the city fail to make such selection within such time, or within such time make such selection, the title of the remaining portions of the waterway so vacated shall vest in the state, unless the same is situate within the territorial limits of a port district created under the laws of the state, in which event title shall vest in the port district. If subsequent to the vacation, the vacated waterway or portion of waterway is embraced within the limits of a port district created under the laws of the state, the title to such portions thereof as shall

then remain undisposed of by the state shall vest in such port district. The title so vesting shall be subject to any railroad or street railway crossing existing at the time of such vacation.

The provisions of this section shall not apply to any waterway or portion of waterway which forms, or by improving the same may be made to form, a connection between a river, or another waterway, and tidal waters. [1927 ch. 255, Sec. 118; RRS Sec. 7797-118.]

B. County and State

1. Definitions

County

36.75.010 Definitions....(5) "County road," is one established as such by resolution of the board of county commissioners and may include any public highway or part thereof, outside the limits of cities and towns which has not been designated as a primary state highway or as a secondary state highway.

County and City

36.75.010 Definitions....(10) "Public highway," every way open as a matter of right to public vehicular travel.

2. Transfer of Portions of State Highways to Counties

County

36.75.070 Highways worked seven years are county roads. All public highways in this state, outside incorporated cities and towns and not designated as state highways, which have been used as public highways for a period of not less than seven years, where they have been worked and kept up at the expense of the public, are county roads. [1955 ch. 361, Sec. 2. Prior: 1945 ch. 125, Sec. 1, part; 1937 ch. 187, Sec. 10, part; Rem. Supp. 1945 Sec. 6450-10, part.]

County

36.75.080 Highways used ten years are county roads. All public highways in this state, outside incorporated cities and towns and not designated as state highways, which have been used as public highways for a period of not less than ten years are county roads: Provided, That no duty to maintain such public highways for any liability for any injury or damage for failure to maintain such public highway or any road signs thereon shall attach to the county until the same shall have been adopted as a part of the county road system by resolution of the county commissioners. [1955 ch. 361 Sec. 3. Prior: 1945 ch. 125, Sec. 1, part; 1937 ch. 187, Sec. 10, part; Rem. Supp. 1945 Sec. 6450-10, part.]

County

36.75.090 Abandoned state highways. All public highways in this state which have been a part of the route of a state highway and have been or may hereafter be no longer necessary as such shall, upon certification thereof by the director to the board of the county in which any portion of such highway is located, be and become a county road of such county, and upon such

certification the director may certify to the governor the abandonment of such highways, giving a description thereof, and the governor may execute and the secretary of state shall attest and deliver to the county a deed of conveyance on behalf of the state to such abandoned highways or portions thereof. [1955 ch. 361, Sec. 4. Prior: 1953 ch. 57, Sec. 1; 1945 ch. 125 Sec. 1, part; 1937 ch. 187, Sec. 10, part; Rem. Supp. 1945 Sec. 6450-10, part.]

3. Width of County Roads

County

36.86.010 Standard width of right-of-way prescribed. The width of thirty feet on each side of the center line of county roads, exclusive of such additional width as may be required for cuts and fills, is the necessary and proper right-of-way width for county roads, unless the board of county commissioners, shall, in any instance, adopt and designate a different width. This shall not be construed to require the acquisition of increased right-of-way for any county road already established. [1937 ch. 187, Sec. 14; RRS Sec. 6450-14.]

4. Establishment of County Roads

County

36.81.010 Resolution of intention and necessity. The board may by original resolution entered upon its minutes declare its intention to establish any county road in the county and declare that it is a public necessity and direct the county road engineer to report upon such project. [1937 ch. 187, Sec. 19; RRS Sec. 6450-19.]

County

36.81.020 Freeholders' petition - Bond. Ten or more freeholders of any county may petition the board for the establishment of a county road in the vicinity of their residence, setting forth and describing the general course and terminal points of the proposed improvement and stating that the same is a public necessity. The petition must be accompanied by a bond in the penal sum of three hundred dollars, payable to the county, executed by one or more persons as principal or principals, with two or more sufficient sureties, conditioned that the petitioners will pay into the county road fund of the county all costs and expenses incurred by the county in examining and surveying the proposed road and in the proceedings thereon in case the road is not established by reason of its being impracticable or there not being funds therefor. [1937 ch. 187, Sec. 20, part; RRS Sec. 6450-20, part.]

County

36.81.030 Deeds and waivers. The board may require the petitioners to secure deeds and waivers of damages for the right of way from the landowners, and, in such case, before an examination or survey by the county road engineer is ordered, such deeds and waivers shall be filed with the board. [1937 ch. 187 Sec. 20, part; RRS Sec. 6450-20, part.]

County

36.81.040 Action on petition. Upon the filing of the petition and bond and being satisfied that the petition has been signed by freeholders residing in the vicinity of the proposed road, the board shall direct the county road engineer to report upon the project. [1937 ch. 187, Sec. 20, part; RRS Sec. 6450-20, part.]

County

36.81.090 Expense of proceedings. The cost and expense of the road, together with cost of proceedings thereon and of right of way and any quarries or other land acquired therefor, and the maintenance of the road shall be paid out of the county road fund. When the costs are assessed against the principals on the bond given in connection with a petition for the improvement, the county auditor shall file a cost bill with the county treasurer who shall proceed to collect it. [(i) 1937 ch. 187, Sec. 22, part; RRS Sec. 6450-22, part. (ii) 1937 ch. 187 Sec. 20, part; RRS Sec. 6450-20, part.]

5. Vacation of County Roads

County

Sec. 32, ch. 19,p. 603, Laws of 1889-90 Vacation of unopened county roads. Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopened for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same barred by lapse of time.

County and City

Secs. 1 and 2, ch. 90, Laws of 1909 Vacation of unopened county roads - Highways, streets, alleys, or other public places dedicated in plats excepted. That section 32 of an act entitled "An act to provide for laying out, establishing, altering, changing the width of, or vacating any county road, and providing for assessment, payment of damages, and providing for appeals," approved March 7, 1890, be the same is hereby amended to read as follows: "Sec. 32. Any county road, or part thereof, which has heretofore been, or may hereafter be authorized, which remains unopen for public use for a space of five years after the order is made or authority granted for opening the same, shall be, and the same is hereby vacated, and the authority for building the same barred by lapse of time: Provided, however, That the provisions of this section shall not apply to any highway, street, alley or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, nor to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places."

Sec. 2. An emergency exists and this act shall take effect immediately.

County

36.87.010 Resolution of intention to vacate. When a county road or any part thereof is considered useless, the board by unanimous resolution entered upon its minutes, may declare its intention to vacate and abandon the same or any portion thereof and shall direct the county road engineer to report upon such vacation and abandonment. [1937 ch. 187, Sec. 48; RRS Sec. 6450-48.]

County

36.87.020 Freeholders' petition - Bond. Ten freeholders residing in the vicinity of any county road or portion thereof may petition the board to vacate and abandon the same or any portion thereof. The petition must show the land owned by each petitioner and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. The petition must be accompanied by a bond in the penal sum of one hundred dollars, payable to the county, executed by one or more of such petitioners as principal or principals, and two or more satisfactory sureties, and conditioned that the petitioners will pay into the county road fund of the county the amount of all cost and expenses incurred in the examination, report, and all proceedings pertaining to such petition to vacate and abandon. (1937 ch. 187, Sec. 49, part; RRS Sec. 6450-49, part.]

County

36.87.030 Action on petition. On the filing of the petition and bond and on being satisfied that the petition has been signed by petitioners residing in the vicinity of the county road or portion thereof, the board shall direct the county road engineer to report upon such vacation and abandonment. [1937 ch. 187, Sec. 49, part; RRS Sec. 6450-49, part.]

County

36.87.090 Vacation of road unopened for five years - Exceptions. Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time; Provided, That this section shall not apply to any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without the limits of an incorporated city or town, or to any land conveyed by deed to the state or to any county, city, or town for highways, roads, streets, alleys, or other public places. [1937 ch. 187, Sec. 52; RRS Sec. 6450-52.]

6. Maintenance of Highway Plat-Book by County Engineer

County

36.80.050 Highway plat book. He shall keep a highway plat book in which he shall have accurately platted all public roads

and highways established by the board. [1907 ch. 160, Sec. 2; RRS Sec. 4149.]

7. Markers and Monuments on County Roads and Highways

County

36.86.050 Monuments at government survey corners. The board and the road engineer, at the time of establishing, constructing, improving, or paving any county road, shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey, whenever any such original monuments or markers fall within the right-of-way of any county road, and shall aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any county road heretofore established, by permitting inspection of the records in the office of the board and the county engineering office. [1937 ch. 187, Sec. 36; RRS Sec. 6450-36.]

State

47.36.010 Restoration of U.S. survey markers. The director shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey when the original monuments or markers fall within the right-of-way of a state highway, and shall aid in the reestablishment of such corners, monuments, or markers destroyed or obliterated by the construction of the highway by permitting inspection of the records in the office of his department. [1937 ch. 53, Sec. 42; RRS Sec. 6400-42.]

VIII. POWERS AND JURISDICTION OF INCORPORATED CITIES AND TOWNS OVER CONTIGUOUS WATERS

City

35.21.160 Jurisdiction over adjacent waters. The powers and jurisdiction of all incorporated cities and towns of the state having their boundaries or any part thereof adjacent to or fronting on any bay or bays, lake or lakes, sound or sounds, river or rivers, or other navigable waters are hereby extended into and over such waters and over any tidelands intervening between any such boundary and any such waters to the middle of such bays, sounds, lakes, rivers, or other waters in every manner and for every purpose that such powers and jurisdiction could be exercised if the waters were within the city or town limits: Provided, That in fourth class cities or towns the territory added by this section shall be over and above the one square mile established by law as the maximum territory within its limits. [1909 ch. 111, Sec. 1; RRS Sec. 8892.]

IX. PARKS

67.20.010 Authority to acquire and operate - Charges. Any

city acting through its city council, or its board of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting through its board of county commissioners, and any town acting through its city council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations, to acquire any land within this state for park, playground, gymnasiums, swimming pools, field houses, and other recreational facilities, bathing beach, or public camp purposes, and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses, and other recreational facilities, bathing beaches, or public camps to nearby highways, by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate, and maintain parks, playgrounds, gymnasiums, swimming pools, field houses, and other recreational facilities, bathing beaches, roads, and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the Constitution and laws of the state, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units exercising said power.

Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [(i) 1949 ch. 97, Sec. 1; 1921 ch. 107 Sec. 1; Rem. Supp. 1949 Sec. 9319. (ii) 1949 ch. 97, Sec. 3; 1921 ch. 107, Sec. 3; Rem. Supp. 1949 Sec. 9321.]

Notwithstanding the express provisions of this statute empowering cities to enforce police regulations beyond their territorial limits, it would seem that they may not do so for the reason that in Brown v. City of Cle Elum, 145 Wash. 588, 261 Pac. 112 (1927) ((See also 143 Wash. 606, 255 Pac. 961 (1927).)) the State Supreme Court of Washington held invalid a Cle Elum ordinance, which was passed pursuant to state legislation authorizing a city to police its watershed outside of its corporate limits, providing for policing its watershed outside the corporate limits,

A fourth class municipality may plat and dedicate a street through park property provided the use of the land for street purposes will not be inconsistent with the use of the remaining land for park purposes. Att. Gen. Op., dated June 15, 1955.

A city of the third class may not grant an easement to a private person over a city street, road, or park drive currently devoted to public use for the purpose of a private driveway. Att. Gen. Op., dated July 12, 1956.

67.20.020 Contracts for cooperation. Any city, park district, school district, county, or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group, or organization, whether public or private, may be utilized by consent of the owner. [1949 ch. 97, Sec. 2; 1921 ch. 107, Sec. 2; Rem. Supp. 1949, Sec. 9320.]

67.20.030 Scope of chapter. This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1921 ch. 107, Sec. 4; RRS Sec. 9322.]

X. WASHINGTON STATE COORDINATE SYSTEM

58.20.010 U.S plane coordinate adopted - Zones. The system of plane coordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the state is hereafter to be known as the "Washington coordinate system."

For the purpose of the use of this system the state is divided into a "north zone" and a "south zone."

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel forty-seven degrees and thirty minutes north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel forty-seven degrees and thirty minutes north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman, and Yakima. [1945 ch. 168, Sec. 1; Rem. Supp. 1945 Sec. 10726a.]

58.20.020 Designation of system by zones. As established for use in the north zone, the Washington coordinate system shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system, north zone."

As established for use in the south zone, the Washington coordinate system shall be named, and in any land description in which it is used it shall be designated, the "Washington co-

ordinate system, south zone." [1945 ch. 168, Sec. 2; Rem. Supp. 1945 Sec. 10726b.]

58.20.030 X and Y coordinates. The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-coordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate," shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system, of the triangulation and traverse stations of the United States Coast and Geodetic Survey within the state as those coordinates have been determined by the survey. [1945 ch. 168, Sec. 3; Rem. Supp. 1945 Sec. 10726c.]

58.20.040 Tract in both zones, how described. When a tract of land to be defined by a single description extends from one into the other of the coordinate zones, the positions of all points on its boundaries may be referred to either of the zones, the zone which is used being specifically named in the description. [1945 ch. 168, Sec. 4; Rem. Supp. 1945 Sec. 10726d.]

58.20.050 Zones defined. For purposes of more precisely defining the Washington coordinate system, the following definition by the United States Coast and Geodetic Survey is adopted:

The Washington coordinate system, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes forty-seven degrees and thirty minutes and forty-eight degrees and forty-four minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred twenty degrees and fifty minutes west of Greenwich and the meridian forty-seven degrees and no minutes north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

The Washington coordinate system, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes forty-five degrees and fifty minutes and forty-seven degrees and twenty minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred twenty degrees and thirty minutes west of Greenwich and the parallel forty-five degrees and twenty minutes north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

The position of the Washington coordinate system shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first order and second order work, whose geodetic positions have been rigidly ad-

justed on the North American datum of 1927, and whose coordinates have been computed on the system herein defined. Any such station may be used to establish a survey connection with the Washington coordinate system. [1945 ch. 168, Sec. 5; Rem. Supp. 1945 Sec. 10726e.]

58.20.060 Recording coordinates - Conditions. No coordinates based on the Washington coordinate system, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless the point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in RCW 58.20.050: Provided, That the one-half mile limitation may be modified by an authorized state agency to meet local conditions. [1945 ch. 168, Sec. 6; Rem. Supp. 1945 Sec. 10726f.]

58.20.070 Use of term limited. The use of the term "Washington coordinate system" on any map, report of survey, or other document, shall be limited to coordinates based on the Washington coordinate system as defined herein. [1945 ch. 168, Sec. 7; Rem. Supp. 1945 Sec. 10726g.]

58.20.080 U.S. survey to prevail. When coordinates based on the Washington coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of the subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates. [1945 ch. 168, Sec. 8; Rem. Supp. 1945, Sec. 10726h.]

58.20.090 Construction of chapter. Nothing contained herein shall require a purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system. [1945 ch. 168 Sec. 9; Rem. Supp. 1945 Sec. 10726i.]

XI. RECORDING STATUTES

County

36.32.380 Record of surveys. The board of county commissioners shall cause to be recorded in a suitable book all surveys except such as are made for a temporary purpose. The record book shall be so constructed as to have one page for diagrams to be numbered progressively and the opposite page for notes and remarks; no diagram shall be so constructed as to scale less than one inch to twenty chains. [1895 ch. 77, Sec. 5; RRS Sec. 4150.]

65.04.030 Instruments to be recorded or filed. Upon payment of his fees therefor, the county auditor must record separately in large and well-bound books:

(1) Deeds, grants, and transfers of real property, mort-

gages, and releases of mortgages of real estate, powers of attorney to convey real estate, and leases which have been acknowledged or proved: Provided, That deeds, contracts, and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of the addition has been filed and made a matter of record;

(2) Marriage contracts;

(3) Official bonds;

(4) Instruments describing or relating to the separate property or community interest of married women;

(5) Patents to lands and receiver's receipts, whether for mineral, timber, homestead, or preemption claims or cash entries;

(6) Certificates of sales for county or municipal taxes; and

(7) All such other instruments as are required to be recorded and such as are required by law to be filed if requested so to do by the party filing them. [1919 ch. 182, Sec. 1; RRS Sec. 10601.]

65.04.050 Record of instruments, how made and kept. The county auditor shall keep a general index, direct and inverted. The direct index shall be divided into seven columns, and with heads to the respective columns, as follows: Time of reception, grantor, grantee, nature of instrument, volume and page where recorded, remarks, description of property. He shall correctly enter in the index every instrument concerning or affecting real estate which is required to be recorded, the names of grantors, in alphabetical order. The inverted index shall be divided into seven similar columns, except that "grantee" shall occupy the second column and "grantor" the third, the name of grantees being in alphabetical order. For the purposes hereof, the term "grantor" means a person conveying or encumbering the title to property, or a person against whom a lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record.

The auditor shall also keep a well-bound book in which shall be platted all maps of cities and towns or additions thereto within the county, together with the description, legend, acknowledgment, or other writing thereon. He shall keep an index to the book of plats, which shall contain the name of the city or town, or addition. He shall also enter in the general index above referred to, the name of the person platting the city or town, or addition, in the column prescribed for "grantors," describing the grantee in such case as the "public." He shall not receive or record such a plat or map until it is approved by the mayor and council of the city or town in which the property so platted is situated, or if the property is not in a city or town, the plat shall be first approved by the board of

county commissioners, and he shall not receive for record a plat, map, or subdivision of land bearing a name of same or similar to the name of a map or plat already on record in his office. [1893 ch. 119, Sec. 12; Code 1881, Sec. 2728; RRS Sec. 10603.]

79.32.020 Application - Proof of upland use - Conveyance. Whenever application is made to the commissioner by any department of the United States government for the use of any tide or shorelands belonging to the state and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.32.010, upon proof being made to the commissioner that such uplands are so held by the United States for such purposes, he shall cause such fact to be entered in the records of his office and shall certify such fact to the governor, who shall execute a deed, in the name of the state attested by the secretary of state, conveying the use of such lands, for said purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining such tide and shore lands. [1927 ch. 255, Sec. 151; RRS Sec. 7797-151.]

XII. AGENCY FOR SURVEYS AND MAPS

State

58.24.010 Declaration of necessity. It is the responsibility of the state to provide a means for the identification and preservation of survey points for the description of common land boundaries in the interest of the people of the state. There is an immediate necessity for the adoption of a system of permanent reference as to boundary monuments. There is now no recognized agency for the establishment of survey points for the definition of land boundaries and a need for such an agency to coordinate and publish dependable surveys now in existence where the record has been obscured. [1951 ch. 224, Sec. 2.]

State

58.24.020 Official agency designated - Advisory board. The engineering department of the department of public lands is hereby designated as the official agency for surveys and maps. The commissioner of public lands shall appoint an advisory board of five members, the majority of whom shall be registered professional engineers or land surveyors, who shall serve at the pleasure of the commissioner. Members of the board shall serve without salary but are to receive actual expenses not to exceed fifteen dollars per diem while actively engaged in the discharge of their duties. [1951 ch. 224, Sec. 3.]

State

58.24.030 Powers - Cooperate and advise - Purposes. The commissioner of public lands and his engineering department and the advisory board are authorized to cooperate and advise with various departments and subdivisions of the state, counties, municipalities and registered engineers or land surveyors of the

state for the following purposes:

(1) The recovery of section corners or other land boundary marks;

(2) The monumentation of accepted section corners, and other boundary and reference marks; said monumentation shall be adequately connected to adjusted United States Coast and Geodetic Survey triangulation stations and the coordinates of the monuments computed to conform with the Washington coordinate system in accordance with the provisions of chapter 58.20;

(3) For facilitation and encouragement of the use of the Washington state coordinate system; and

(4) For promotion of the use of the level net as established by the United States Coast and Geodetic Survey. [1951 ch. 224, Sec. 4.]

State

58.24.040 Powers - Standards, maps, records, report. The agency is further authorized to:

(1) Set up standards of accuracy and methods of procedure;

(2) Compile and publish maps and records from surveys performed under the provisions of this chapter, and to maintain suitable indexes of surveys to prevent duplication of effort and to cooperate with all agencies of local, state, and federal government to this end;

(3) Compile and maintain records of all surveys performed under the provisions of this chapter, and assemble and maintain records of all reliable survey monuments and bench marks within the state;

(4) Supervise the sale of maps and such publications as may come into the possession of the division of surveys and maps. Revenue derived from the sale thereof shall revert to the general fund; and

(5) Submit, as part of the biennial report of the commissioner of public lands, a report of the accomplishments of the agency. [1951 ch. 224, Sec. 6.]

State

58.24.050 Employees - Licensed engineers or surveyors. All employees who are in responsible charge of work under the provisions of this chapter shall be licensed professional engineers or land surveyors. [1951 ch. 224, Sec. 5.]

XIII. SUBMERGED LANDS ACT OF 1953

67 Stat. 29-33 ((43 U.S.C.A. 1301 - 1315 (1956 Cum. Annual Pocket Part):

Public Law 31 Chapter 65

An Act

To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural

resources of the seabed of the Continental Shelf seaward of State boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act".

TITLE I

Definition

Sec. 2. When used in this Act --

(a) The term "lands beneath navigable waters" means --

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: Provided, however, That nothing herein shall be construed as conferring

upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;
(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;
(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;
(g) The term "State" means any State of the Union;
(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II

Lands Beneath Navigable Waters Within State Boundaries

Sec. 3. Rights of the States. --
(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located and the respective grantees, lessees, or successors in interest thereof;
(b) (1) The United States hereby releases and relinquishes unto said states and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United

States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;
(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: Provided, however, That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: Provided, however, That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;
(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or

be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

Sec. 4. Seaward Boundaries. -- The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

Sec. 5. Exceptions From Operation of Section 3 of This Act. -- There is excepted from the operation of section 3 of this Act --

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of

any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

Sec. 6. Powers Retained by the United States. -- (a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

Sec. 7. Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

Sec. 8. Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: Provided, however, That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

Sec. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

Sec. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf

as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

Sec. 11. Separability. -- If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a) 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

Approved May 22, 1953.

The following statutes enacted by the 1957 session of the Washington State Legislature affecting public works, plan approval, and procedures are of concern in performing engineering and land surveying services: (The text of these acts is not included herein.)

Laws, 1957, ch. 42 - Urban Renewal	City
Laws, 1957, ch. 194 - Recommendation of Planning Commission	City and County
Laws, 1957, ch. 157 - Planning Aid	City and County
Laws, 1957, ch. 130 - Regional Planning	
Laws, 1957, ch. 213 - Metropolitan Corporation	

X. APPLICABLE SELECTED PROVISIONS OF THE CONSTITUTION OF THE STATE OF WASHINGTON

LEASING AND MAINTENANCE OF WHARVES, DOCKS, AND OTHER STRUCTURES, Article XV, Sec. 2.
EXTENSION OF STREETS OVER TIDE LANDS, Article XV, Sec. 3.
HARBOR LINE COMMISSION AND RESTRAINT ON DISPOSITION, Amendment 15.
TIDE LANDS. DECLARATION OF STATE OWNERSHIP, Article XVII, Sec. 1.
DISCLAIMER OF CERTAIN LANDS, Article XVII, Section 2.
STATE BOUNDARIES, Article XXIV, Sec. 1.
TERRITORIAL LAWS CONVEYING TIDE OR SHORE LANDS - INVALID, Article XXVII, Sec. 2.

LEASING AND MAINTENANCE OF WHARVES, DOCKS, AND OTHER STRUCTURES, Article XV, Sec. 2 reads:

"The legislature shall provide general laws for the leasing of the right to build and maintain wharves, docks, and other structures, upon the areas mentioned in section one of this article, but no lease shall be made for any term longer than thirty years, or the legislature may provide by general laws for the building and maintaining upon such area wharves, docks, and other structures."

EXTENSION OF STREETS OVER TIDE LANDS, Article XV, Sec. 3 reads:

"Municipal corporations shall have the right to extend their streets over intervening tide lands to and across the area reserved as herein provided."

HARBOR LINE COMMISSION AND RESTRAINT ON DISPOSITION, Amendment 15 reads:

"The legislature shall provide for the appointment of a commission whose duty it shall be to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays and inlets of this state, wherever such navigable waters lie within or in front of the corporate limits of any city, or within one mile thereof on either side. Any harbor line so located or established may thereafter be changed, relocated or reestablished by the commission pursuant to such provision as may be made therefor by the legislature. The state shall never give, sell or lease to any private person, corporation, or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high water, and within not less than fifty feet nor more than two thousand feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its right to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce."

Art. XVI, Sec. 4 of the Constitution of the State of Washington relating to Platting of Granted Lands provides:

"No more than one hundred and sixty acres of any granted lands of the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city, or within two miles of the boundary of any incorporated city, where the valuation of such lands shall be found by appraisement to exceed one hundred dollars per acre shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block, and not more than one block shall be offered for sale in one parcel."

TIDE LANDS. DECLARATION OF STATE OWNERSHIP, Article XVII, Sec. 1 reads:

"The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state."

DISCLAIMER OF CERTAIN LANDS, Article XVII, Sec. 2 reads:

"The state of Washington disclaims all title in and claim to all tide, swamp, and overflowed lands patented by the United States: Provided, the same is not impeached for fraud."

STATE BOUNDARIES, Article XXIV, Sec. 1 reads:

"The boundaries of the state of Washington shall be as follows: Beginning at a point in the Pacific ocean one marine league due west of and opposite the middle of the mouth of the north ship channel of the Columbia river; thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof to where the forty-sixth parallel or north latitude crosses said river, near the mouth of the Walla Walla river; thence east on said forty-sixth parallel of latitude to the middle of the main channel of the Shoshone or Snake river; thence follow down the middle of the main channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river; thence due north to the forty-ninth parallel of north latitude; thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's island from the continent, that is to say to a point in longitude one hundred and twenty-three degrees, nineteen minutes, and fifteen seconds west thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific ocean equidistant between Bonnilla point, on Vancouver's island, and Tatoosh island lighthouse; thence

running in a southerly course and parallel with the coast line, keeping one marine league off shore, to place of beginning."

TERRITORIAL LAWS CONVEYING TIDE OR SHORE LANDS - INVALID, Article XXVII, Sec. 2 reads:

"All Laws now in force in the territory of Washington which are not repugnant to this constitution shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature: Provided, that this section shall not be so construed as to validate any act of the legislature of Washington Territory granting shore or tide lands to any person, company, or any municipal or private corporation."

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