been mention of today's meeting, but at the end of meeting with Mr. Kwarsick it was his understanding there would be a discussion as late as last Thursday. Having heard nothing further, he did not believe the matter would be presented today. His goal is to move forward in a positive manner, but objects to the procedure.

Chair felt nothing would be gained by issuing an enforcement order at this time and proposed to table consideration until the meeting of August 28, and at that time staff present a progress report on which to base a decision concerning the order. Adopting an enforcement order would force Mr. Henny to spend most of his energy appealing the enforcement order, and Chair would rather the energy be spent towards correcting the problem.

Commissioner Koetje and Commissioner Colby felt the situation such, given the history, that the enforcement order necessary as a tool for the Planning Department in order to settle the problem.

Tom Roehl, Freeland, questioned the appeal avenue available to Mr. Henny under such enforcement order.

Mr. Kwarsick stated that under the Shoreline Management Act, the Board is acting in a legislative capacity to enforce the State Shoreline Management Act; sees Regulatory Order as very positive first step.

Mr. Roehl reminded that under the previous situation, Mr. Henny dealt with the Army Corps, Island County, Department of Fisheries, etc., with determination made that a certain amount of material had to be removed but a certain amount authorized under prior permit. The Shoreline Act exempts up to 250 yards of fill associated with a single family residence, exempts driveways as appurtenances to single family residences, and other exemptions. He questioned process in this case since it appeared Mr. Henny was being accused of being a violator when those facts may be in dispute, and it would appear there is room for debate on whether or not there is or is not a violation.

The Chair was concerned with the issue of due process, and judging a current case by what happened in the past relating to a case already closed by the County.

Commissioner Koetje maintained that the Planning Department needed the authority to carry out enforcement action necessary to get the matter resolved. Commissioner Colby saw the order as a tool for the Planning Department to use in accomplishing those things Mr. Henny stated he would do.

Commissioner Koetje moved adoption of the Shoreline Cease and Desist Order in the matter of Enforcing Compliance by David C. Henny and Marion F. Henny with Chapter 90.58 RCW and the Island County Shoreline Management Master Program. Motion was seconded by Commissioner Colby.

Chairman Caldwell moved to table the motion until the meeting of August 28, 1989. Motion died for lack of a second.

The motion as made and seconded carried by majority vote; the Chairman voted against the motion to approve the enforcement order.

The Chair commented that the Order judged Mr. Henny or his agent to have deposited broken concrete rubble and other debris and an estimated 30 to 35 yards of earth material. However, he believes he heard staff today admit that the concrete rubble possibly was there earlier as part of a previous matter. The only way Mr. Henny has to have any kind of a hearing to contest any of the allegations in the order approved is to go to court.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ENFORCING)
COMPLIANCE BY DAVID C. HENNY)
AND MARION F. HENNY WITH) SHORELINE CEASE
CHAPTER 90.58 RCW AND THE) AND DESIST ORDER
ISLAND COUNTY SHORELINE)
MANAGEMENT MASTER PROGRAM)
_____)

TO: DAVID C. HENNY AND MARION F. HENNY
6290 S. Bayview Road
Clinton, WA 98236

RCW 90.58.140 (1) states: "No development shall be undertaken on the shorelines of the state except those which are consistent with the policy of this chapter (Chapter 90.58 RCW, the Shoreline Management Act of 1971 (SMA) and, after adoption or approval, as appropriate, the applicable guidelines, regulations or (county shoreline) master program (adopted pursuant to the authority of the SMA)."

RCW 90.58.030 (3) (d) states as follows: "'Development' means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;"

RCW 90.58.030 (3) (e) states, in part, as follows: "'Substantial development' shall mean any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state;..."

ICC 16.21.075, DREDGING AND LANDFILL, of the Island County Shoreline Management Master Program, provides in part, as follows: "Landfills are the creation of a dry upland area by the deposition of materials into water, or onto shoreline or wetland areas.

1. Landfill shall be permitted only in conjunction with shoreline-dependent uses.

2. Landfills shall not be permitted in estuaries, tidelands, marshes, ponds, swamps or similar water-retention areas."

Information has been provided to this Board that you or your agents have deposited broken concrete rubble and other debris and an estimated 30 to 35 cubic yards of earth materials (sand) into and/or adjacent to Useless Bay Lagoon, a part of Island County shorelines and wetlands at the above-listed address, without having obtained a required Substantial Development Permit (such activity is not eligible for a Shoreline Exemption).

This constitutes filling and dumping as those terms are used in the Island County Shoreline Master Program, ICC Chapter 16.21. This constitutes "substantial development" under RCW 90.58.030 (3) (e) and was accomplished without the required permit. This also constitutes "development" under RCW 90.58.030 (3) (d) which is inconsistent with the Island County Shoreline Management Master Program.

The above-referenced broken concrete rubble and other debris is fill of a type not known to have previously existed on the site and not mentioned in any correspondence on file with the County.

Further, the SEPA Determination of Non-Significance issued on October 23, 1986 was based on a restoration plan which required the