Shorelines Management - New Grantee Orientation

OVERVIEW

October 6, 2011 – Moses Lake

October 18, 2011 - Chehalis

WA State Department of Ecology

Workshop Objectives:

- “Big picture” overview of all the steps required in the SMP update process from inventory to adoption
- Insight into:
  - Opportunities and challenges you will face during the SMP update process and,
  - What’s expected in satisfying both the substantive and procedural requirements
- Identify resources and assistance that are or will be available to you through the SMP update process
- Provide policy, technical and procedural guidance (as time permits...)
- Promote networking & coordination amongst all involved
- Manage expectations at all levels

Shoreline Management Act (SMA)

- In effect now for over 40 years...

  Responding to a voter initiative, the State Legislature adopted an alternative proposal that took effect June 1971

- Designed as a cooperative state/local <u>partnership</u>

The Role of Local & State Gov't

- Local contribution:
  - developing a "locally tailored" SMP and keeping it current
  - administering/enforcing the SMP over time
- State (Ecology) contribution:
  - providing technical assistance & support to local government (including $)
  - *Quarterly* Shoreline Planner Coordination Meetings
  - reviewing and approving SMPs before they take effect
  - on-going review and approval of shoreline CUPs and variances

Ecology's contribution (Continued) :

Ecology also continues to update available guidance:

- Updates of our guidance is underway, with providing direction on methodology, science, policy, procedural and SMP Guidelines requirements, as well as SMP "model" language, case law and legislative updates.

- Revised guidance topics are periodically posted on our website, at:

  http://www.ecy.wa.gov/programs/sea/sma/st_guide/SMP/index.html

- Our website now sports a new look organized consistent with the "phases" outlined in the SMP Planning "rainbow" chart

SMA policies:

All SMP updates must be developed consistent with the <u>three</u> basic policies of the SMA (RCW 90.58.020)

These policies include...

SMA policy (RCW 90.58.020):

- *"protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life…"*

SMA policy (RCW 90.58.020): - Continued -

- *"…uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline."*

SMA policy (RCW 90.58.020): - Continued -

- *"This policy contemplates protecting...public rights of navigation and corollary rights incidental thereto"*

- *"Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical...any interference with the public's use of the water."*

A brief SMA historical perspective....

Shoreline Management in the 1970s

- Environmental focus in the 1970s:

  Point source pollution, resource extraction, commercial/industrial use, landfill (Wilbur v. Gallagher).

Comparison of Shoreline Legislation:

Initiative 43 (prep. by WEC, et al.)

- Policy "triad" established:
  - Environmental protection
  - Preferred uses
  - Public access protections
- Significant State Role:
  - Shorelines of Statewide Significance
  - State permit system
  - Ecological Commission prepares statewide regulatory plan
- Regulated development within 500 feet

Legislature's Alternative (43B)

- Policy "triad" remains
- State/Local partnership emphasized:
  - Ecology prepares SMP guidelines and approves individual SMPs
  - Locally tailored and administered SMPs
- Regulated development within entire floodplain or 200'
- Provisions giving DNR management of its aquatic lands vetoed; DNR given seat on SHB

Shoreline Management in the 1970s (cont'd)

- **1972**
  - Washington first state to have CZMP adopted
  - Voters approve alternative 43B (retroactive to June 1, 1971)
  - Ecology adopts first SMP Guidelines as WAC:
    - Inventory required (land use, *not* ecological conditions/needs)
    - 4 Environments (Natural, Conservancy, Urban, Rural)
    - Vague, open-ended
  - Local governments given two years to adopt SMPs
  - After two years, only 7 jurisdictions had adopted SMPs

- **1979:** 95% of first SMPs adopted statewide
  - Shoreline permits processed in large numbers
  - Limited SMP amendments begin; few comprehensive

1990s: Tensions Emerge

- **1990:** GMA passed.
  - "Presumed validity" established
  - Critical area protections required
  - GMA/SMA relationship unclear
  - Shoreline modification, SFR development continue
- **1992**
  - CAOs required to be completed statewide
  - "Dual" coverage (CAOs/SMPs)
- **1994**
  - SMP Guidebook completed
  - SMA/GMA integration "hot topic"
  - Governor's Regulatory Reform Task Force reviews statutes

1990s: Tensions Emerge (cont'd)

- **1995**
  - Ecology begins guidelines rule-making
  - GMA/SMA statutes partially integrated (ESHB 1933), but questions remain regarding relationship of CAOs to SMPs
- **1996**
  - Ecology conducts public opinion poll
  - Convenes Shoreline Policy Advisory Group to draft SMP guidelines
- **1997**
  - LUSC attempts State Unified Development Code: effort fails
  - LUSC considers SMA/GMA integration at request of Ports and local governments. (No consensus reached)

1990s: Tensions Emerge (cont'd)

- **1998**
  - Ecology establishes Shorelines Guidelines Commission to help draft new guidelines
  - 19 public meetings held
- **1999**
  - Ecology starts 2nd formal round on guidelines
  - After 3000 comments, Ecology withdraws rule
  - ESA & salmon listings fully emerge
    - Snake River salmon originally listed 1992
    - Puget Sound salmon originally listed 1999

Controversy Peaks

- **2000**
  - ”No Net Loss” and “Ecological Functions” concepts emerge
  - Ecology develops and adopts Path A & B guidelines
  - Coalition of business and local governments appeal
- **2001**
  - SMP guidelines invalidated
  - SHB rules that Ecology exceeded authority (ESA)
  - Ecology enters into mediation

Resolution of Guidelines Litigation

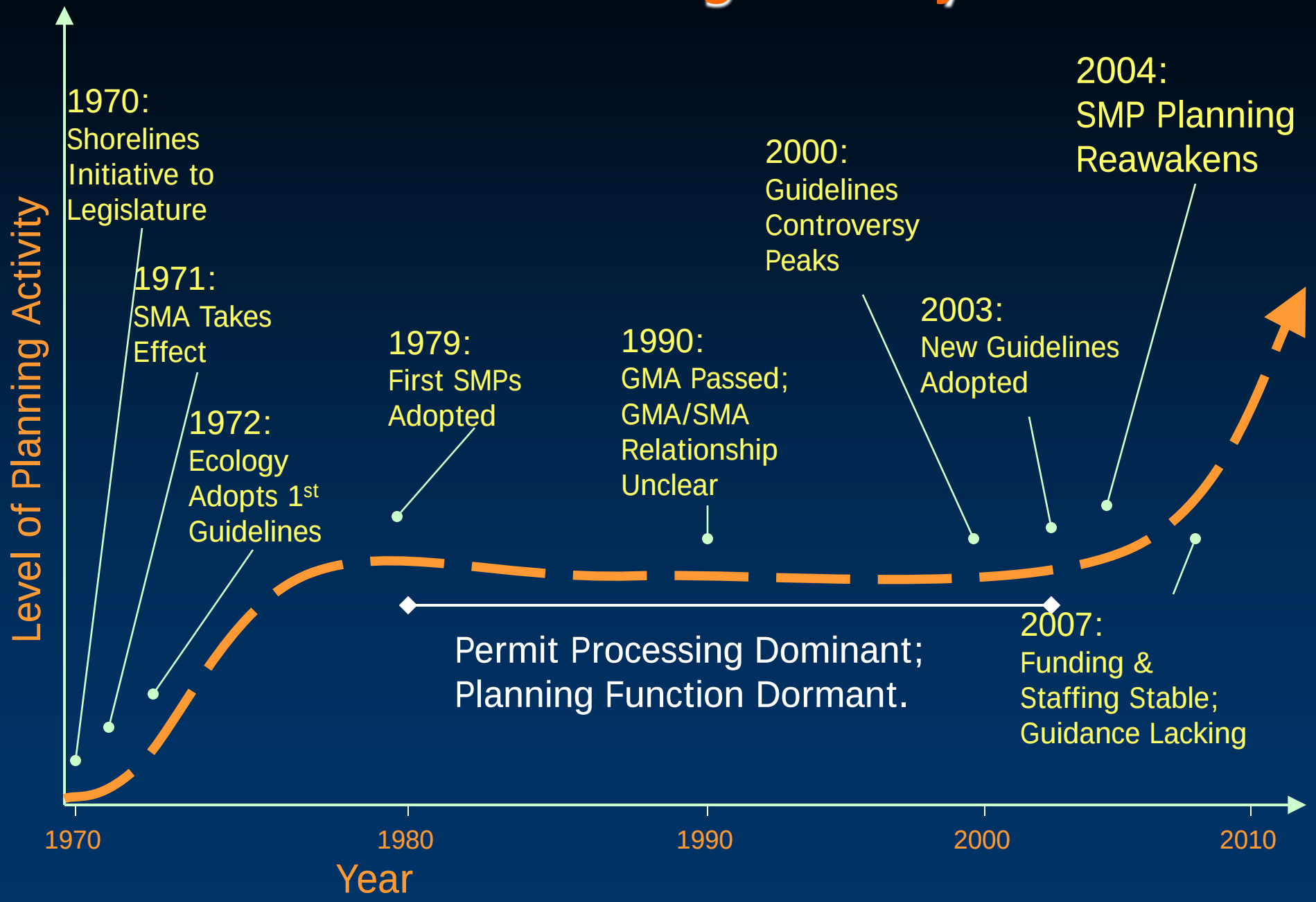
- **2002**
  - Litigating parties reach agreement on:
    - New guidelines draft
    - Legislation to phase deadlines thru 2014
    - Commitment by Legislature to fund local gov't SMPs updates
- **2003**
  - Ecology adopts new guidelines after 21 public *hearings*
  - Legislature adopts phased deadlines through 2014
  - In sum, three major things converged to get us to where we are today:
    - Ecology adopted by rule new SMP Guidelines
    - New statewide compliance deadlines for SMP updates through 2014
    - $18.8 million provided to local gov'ts over the next decade to fund SMP updates

SMA Planning Function Reawakens

- **2004**
  - Local governments begin “comprehensive” SMP updates.
  - Guidance lacking.
  - Questions of interpretation arise.

- **2007**
  - Funding and Ecology staffing stable.
  - Guidance still lacking.
  - Issues remain with:
    - CAO integration and adoption by reference.
    - What is good enough?
      - buffers/setbacks, science, etc.
    - SMP jurisdiction.
    - Efficient delivery of grants.

SMA Planning Activity



EHB 1653 clarifies SMA/GMA relationship:

- **2010**
  - CAOs adopted under GMA continue to apply in SMA jurisdiction until Ecology approves a Guidelines compliant “comprehensive” SMP update. This means <u>both</u> the CAO and the SMP apply (dual coverage), until the SMP is updated
  - Once a SMP is comprehensively updated, critical areas within shoreline jurisdiction are regulated solely by the SMP

What's Ecology looking for in SMP updates?

- Consistency with the "big three" SMA policies
- Compliance with guidelines requirements
  - findings from required analyses (inventory & characterization, cumulative impacts and use) translated into specific SMP policies, regulations, ED's and restoration measures – we need our planners to plan!
  - All "specific" standards met
  - Local decision-making well documented, especially where conflicts surface
- Public involvement requirements fulfilled
- Early and continuous involvement as SMP is developed
- Timely completion/approval of the update project!

Comprehensive SMP updates - Status Report (as of October 3, 2011):

Statewide there are a total of 263 local governments required to update their SMPs, consistent with the SMP Guidelines.

To date, 40 SMP updates have been completed – this leaves only 223 updates yet to be completed!

However, 168 local governments across the state, are currently underway with comprehensive SMP updates.

Web link to current SMP update status:
http://www.ecy.wa.gov/programs/sea/shorelines/smp/status.html

Workshop Logistics:

- Restrooms
- Breaks
- Lunch – on your own!
- Help yourself to handouts