

Proposed Dept of Ecology 2014 Request Legislation Clarifying the Shoreline Management Act

Two amendments to the Shoreline Management Act are proposed as part of an Ecology request bill to “improve efficiencies” of various statutes we administer (bill Z-0523.) They both pertain to SMP adoption. This agency request legislation has NOT been approved by the Governor’s Office – action is pending.

Topic 1 - RCW 90.58.090 on NNL standard for approval: Ensure clarity on the “no net loss” standard that Shoreline Master Programs must meet, by providing consistency with RCW 36.70A.480 as amended in 2010 HB 1933.

- In 2010, HB 1933 was adopted to harmonize the GMA and SMA. One key outcome: The test of adequacy for an updated SMP was shifted to No Net Loss, from the old “equal to the CAO” statutory test. NNL is a primary objective of the SMP Guidelines rule.
- One section of the SMA on this topic – 90.58.090 - was left out of the 2010 HB 1933. (It had been included in a 2009 version but got left out of a revised bill the next session.)
- We need to clarify this section conform to achieve the intent of the legislature from 2010.

(Excerpt) Sec. 13 RCW 90.58.090 and 2011 c 353 s 14 and 2011 c 277 s 2 are each reenacted and amended to read as follows:

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department as provided in subsection (7) of this section. . . .

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas (~~at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2))~~ that ensures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department guidelines adopted pursuant to RCW 90.58.060.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal. For master programs adopted by rule, the effective date is governed by RCW 34.05.380. The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

Topic 2 - RCW 90.58.190 on effective date: Remove confusing duplicative provision regarding effective date of updated Shoreline Master Programs. The story:

- Several years back, the SMA was amended to send appeals of local Shoreline Master Programs in “fully planning” jurisdictions to the Growth Management Hearings Board (rather than the Shoreline Hearings Board.) The SHB retained appeals in rural “non-fully planning” counties and cities. But the SMA section on appeals was never fully conformed to this multi-path approach.
- We successfully requested legislation in 2012 to clarify appeals provisions. EHB 2671 was adopted.
- But we goofed up in amending the existing language in HB 2671 (Snohomish County recently brought this to our attention.) Effective date was defined in HB 2671 under 90.58.090(7) – see excerpt above. But in subsection 90.58.190(4) our amendment of existing language created an anomalous “effective date” provision that needs to be deleted to avoid confusion in the post-SMP adoption period.

Sec.14. RCW 90.58.190 and 2012 c 172 s 1 are each amended to read as follows:

(Excerpt)(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290. . . .

(3)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date that the department publishes notice of its final decision under RCW 90.58.090(8). . . .

~~((4) A master program amendment shall become effective after the approval of the department or after the decision of the growth management hearings board or shorelines hearings board to uphold the master program or master program amendment, provided that either the growth management hearings board or the shorelines hearings board may remand the master program or master program amendment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.))~~