SMP/CAO issues update

In response to recent *Kitsap Alliance of Property Owners (KAPO)* Court of Appeals decision, Ecology and Commerce have updated our *Anacortes* case guidance. Kitsap County may pursue Supreme Court appeal. Interim guidance is provided pending any further clarification at http://www.ecy.wa.gov/programs/sea/sma/news/reconsider.html.

Key points in the updated guidance:

- First, it is our position that **neither decision affects critical areas ordinances that were adopted prior to the effective date of ESHB 1933 (2003)**. Those ordinances remain in effect
- Second, it is our position that **CAOs that were adopted after the effective date of ESHB 1933 and are not currently subject to a challenge are valid and remain in effect**. …If the CAO was not challenged within 60 days or if appeals are complete, local governments are not required to revisit the critical areas protections contained in those ordinances.

- Third, it is our position that, moving forward, **local governments that are currently updating their protections of shoreline critical areas should do so under the SMA rather than the GMA**.
  - Either as part of a comprehensive SMP update or as a stand-alone amendment per our new Guidance.
  - Adopting ordinances caution: Ensure that the existing CAO remains in place for critical areas within Shorelines until superseded by an Ecology-approved SMP update.

- Fourth, local governments have **authority and obligation under the SMA and SMPs to condition Shoreline projects to achieve consistency with policy objectives, including protection of shoreline resources.** The legislature directed in ESHB 1933 that local shoreline master programs provide protection of critical areas in shorelines at least equal to the protection provided by their CAO (RCW 36.70A.480(4)).

- In addition, Ecology has issued **guidance on submitting “stand-alone” SMP amendments to incorporate updated CAO standards**. The guidance and associated checklist address procedures and compliance with “applicable” portions of the SMP Guidelines rule.

PSP: Protect shorelines from armoring

- Challenge: WDFW HPA data indicates ~1 ½ miles/year of new bulkheads in 2005-07.
- PSP Action Agenda: Avoid armoring.
  - Proposal: Create a statutory Conditional Use in SMA
  - Initial PSP action in AA: Moratorium on bulkheads and docks "in vicinity of feeder bluffs and forage fish spawning areas."
  - Alternative? "Level playing field" on permits for bulkheads: Delete SDP exemption for bulkheads and Hydraulic Code requirement for WDFW to "approve."

Tribal engagement in update

- Ecology/tribal agreement: Gov't-to-Gov't communication on ECY natural resource policy and regulation adoptions.
- Emphasize: Early involvement of tribes with local government.
- Balance: State/tribal relation, local development of SMP.
- Avoid: "Late hits" of significant tribal issues raised at conclusion of process (ECY review).

Emerging marine issues

- Sea level rise
- “Hydrokinetic” generating facilities: Tidal power siting
- Puget Sound recovery: PSP Action Agenda consistency