

TO: Key parties with interest in our state Shoreline Management Act
FROM: Tom Clingman, Dept of Ecology Shorelands & Environmental Assistance Program
DATE: October 22, 2009
SUBJECT: **Potential Shoreline/GMA legislation re: Anacortes decision (Ecology request)**

Your comments are solicited on possible Ecology request legislation to address the recent *Anacortes* decision by the State Supreme Court. We are very concerned that the *Anacortes* decision does not reflect the broadly-supported agreement contained in 2003 legislation (HB 1933) regarding Critical Areas and Shoreline regulations to protect shoreline habitat.

The Supreme Court case is still in process at this time, as the Court has not responded to the request for reconsideration filed by state agencies and other parties. Ecology is unlikely to propose legislation while the Court process is still underway. But we anticipate that Court action may occur before the 2009 Legislative session. Due to the importance of clarifying the intent of HB 1933, we are circulating potential agency request legislation for comment from key interests.

A key objective of the 2003 legislation was to streamline regulation over the shoreline area, where both Critical Area Ordinance and Shoreline Master Program regulations had applied for many years. In 2003, a wide range of parties agreed in HB 1933 to a systematic transfer to sole SMA authority in Shoreline areas. This transfer is to occur at the time of comprehensive Shoreline Master Program update. A schedule for the required updates, and an agreement to provide state funding, were also included in HB 1933. Additionally, the 2003 bill included criteria to guide Ecology's review and approval of SMP updates – criteria which must be met before the transition to sole SMP authority is implemented.

The recent *Anacortes* decision would transfer sole authority to the SMP at the time of Critical Area Ordinance update. This contradicts our understanding of the intent of HB 1933. The *Anacortes* decision creates an unprecedented new process - formal Ecology approval of Critical Area regulations within the Shoreline area. This contradicts the clear intent of the Growth Management Act regarding local government authority under the GMA. And the new process created by the decision is very problematic for local and state agencies. Local governments could not complete their GMA responsibilities until Ecology gives formal approval to the Critical Area regulations – potentially leaving local governments out of compliance with GMA during the Ecology approval process. Additionally, the *Anacortes* decision requires Ecology to judge the CAO for conformance with our adopted SMP procedural and content requirements – requirements that the CAO, as it was developed over many months by the local government, were never intended to meet.

Additional information on the *Anacortes* case, including links to documents and Ecology/CTED initial guidance to local governments, is on our web site at <http://www.ecy.wa.gov/programs/sea/sma/news/reconsider.html>.

Please send initial comments to Tom Clingman at tcli461@ecy.wa.gov or call me at 360 407 7448. Your interest in effective administration of our state's Shoreline Management Act is greatly appreciated.