

Legislation & Policy Update: 7/23/09

2009 SMA Legislation

HB 2199 – SHIFTS IN SHORELINE LOCATION--PROPERTY OWNER RELIEF (Vote: 95-0)

Adds a new kind of Shoreline Act development review process. In UGA, property owner can request regulatory relief where:

- A shoreline habitat restoration project would shift OHWM/the area subject to SMP regulations, and
- Shift creates a hardship , and other criteria are met.
- Applications to local government attached to permit/approval (Shoreline permit, building permit, etc)
- Ecology has final authority; must act within 30 days after public notice period.

(Continued)

HB 2199 con't:

- Ecology must provide 20 days notice to interested parties, ***except*** when;
 - “The shoreline restoration project is specifically **identified in a SMP or restoration plan**, or is located along a shoreline reach identified in the SMP or restoration plan as appropriate for granting relief from shoreline regulations; and
 - The SMP or restoration plan **includes policies addressing the nature of the relief and why, when, and how it would be applied.**” (Section 2(2))
- SMP update: No requirement to address 2199; opportunity to “jump-start” restoration in urban river corridors.

- **ESHB 1379 SHORELINE MANAGEMENT ACT--
MORATORIA PROCEDURES (67 – 28)**
- SMA moratoria may be declared for six months, plus two six-month extensions. (New wrinkle in land use laws: *Time limit on moratorium.*)
- Ecology has a maximum of 6 months for final action on an SMP update linked to a moratorium. (*Will be a challenge when moratorium is for a comprehensive update.*)
- Should probably include in updated procedures in SMP.

***Anacortes* case update: Finally final**

Court kept with July 08 decision. Updated Ecology and Commerce (CTED) guidance:

- Precedence limited due to 4-1-4 no-opinion decision (only *Anacortes*)
- CAOs previously adopted continue to apply in Shoreline.
- No need to submit CAOs as SMP amendments – but we will create path for these.

ECY developing guidance for “stand-alone” Critical Area Segment SMP amendments.

SMP updates: Should resolve the HB 1933/*Anacortes* issue.../F the SMP is explicit.

- **Final SMP should include city/county determination re: SMP/CAO jurisdiction (resolve HB 1933 intent):**
 - **Is sole regulation by SMP achieved?**
 - **Or does CAO continue to apply within all or part of Shoreline (“dual coverage”) due to “lands necessary for buffers” caveat.**

GMA “Shorelines” section (RCW 36.70A.480):

- **HB 1933 intent: “GMA will not apply** where updated SMP adopted *except*”... (subsection 6 caveat):
- If **“land necessary for buffers”** is not included in SMP, “the local jurisdiction shall **continue to regulate those critical areas and their required buffers pursuant to RCW [36.70A.060\(2\)](#).**”
- Final SMP needs to resolve: Is it or ain’t it sole jurisdiction? Otherwise, continued confusion.

SLR: May 2009 Executive Order on Climate Change

4. *“The Director of the Department of Ecology shall:*

- *evaluate the potential impacts of sea level rise on the state’s shoreline areas, including the potential increases in storm surge and coastal flooding, increased erosion, and loss of habitat and ecosystems, and*
- *develop recommendations for addressing these impacts.*
- *The Department shall invite the Washington State Association of Counties and the Association of Washington Cities to collaborate in conducting the evaluation and developing recommendations.”*

➤ We encourage coastal SMPs to incorporate initial consideration of SLR implications into policies and Environments (not a requirement at this time).