Shoreline Management Act Appeal Procedures – Senate Bill 5192

The problem

Current uncertainty creates lack of predictability, potential confusion

In 2010, state lawmakers adopted House Bill (HB) 2935. As part of natural resource agency reform, the measure standardized appeal procedures in several statutes including the state Shoreline Management Act (SMA).

However, when the standardized appeal procedures were applied to the SMA, problems emerged. The procedures applied through HB 2935 do not ensure timely, consistent notice of the opportunity to appeal government actions taken under the SMA. The SMA is jointly administered by the Department of Ecology (Ecology) and more than 260 local governments with regulated shorelines. It is vital that all parties – governments, applicants and other concerned parties – have a common understanding of the shorelines appeals processes.

Shoreline permit appeals

Under the SMA, any person or organization may appeal the granting, denial, or rescinding of a shoreline permit to the state Shorelines Hearings Board. The SMA provides a 21-day appeal period for all concerned parties to appeal a shoreline permit. To trigger the appeal period, HB 2935 replaced the long-standing term "Ecology date of filing" with "receipt by applicant". In effect, this means new procedural timeframe adopted in HB 2935 are not obvious to parties other than the permit applicant. While "receipt by applicant" works well in other environmental statutes for shoreline permits, it lacks transparency. Parties, other than an applicant, need to know when appeal opportunities begin and end under the SMA.

Shoreline master program appeals

HB 2935 also revised procedures to appeal the approval of new shoreline regulations, called shoreline master programs (SMPs). More than 230 Washington towns, cities and counties are now or soon will be working to update their local SMPs. Ecology has final authority to approve these locally-crafted shoreline development regulations and ordinances. Under the SMA, all concerned parties have 60 days to appeal Ecology's decision regarding an updated SMP. The bill unintentionally established at least two different thresholds for initiating the 60-day appeal timeframe.

WHY IT MATTERS

Predictable and transparent land-use permit procedures are essential. Some of the changes made in 2010 legislation (HB 2935) inadvertently impair clear appeals procedures under the state Shoreline Management Act (SMA).

For example: Under the SMA, the project proponent cannot begin construction until the appeal period ends. To implement this provision, it is essential that the local government and the applicant have the same date for the appeal period. HB 2935 creates unintentional problems in procedural clarity and predictability.

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One section of HB 2935 states the appeal period is "60 days from the department's written notice to the local government," while another part of the same sentence in HB 2935 refers to the appeal timeframe as starting with the "publication of the notice of adoption". The publication of the notice of adoption had been the pre-HB 2935 trigger for starting the SMP appeal period. This ambiguity does not allow for clear notification to interested parties about the start and end of the appeal period. The inevitable result will be confusion and conflict created by this inconsistency.

Ecology's proposal

- **Return to "date of filing" to set the beginning of the shoreline permit appeal period.** The long-standing "date of filing" provision under RCW 90.58.140 ensured that all interested parties received timely notification of a single, commonly-understood appeal period. Returning to the "date of filing" provision solves problems created by HB 2935 by removing the multiple "legal" dates that start the 21-day appeal period under the amendments adopted in 2010. The bill was amended to ensure timely notification of final action on a shoreline permit.
- **Clarify the timeframe to appeal an SMP update so it starts with the publication of a notice of adoption by Ecology.** Proposed revisions to RCW 36.70A.290 and RCW 90.58.190 would correct the confusion created by HB 2935, which creates two appeal triggers – the notice required under GMA and date of the final action letter from Ecology to the appropriate local government.
- **Revise the SMP adoption notice procedures in the Growth Management Act.** This action will make Ecology responsible to publish notice of our final action. Current law makes local government responsible to post notice that Ecology has taken final action. Ecology should be responsible to post notice of our own final action. The burden shouldn't be on local governments.
- **Clarify the process for Ecology's final action on an updated, locally-crafted SMP.** The process for Ecology's approval of a locally-submitted SMP (RCW 90.58.090) was not amended in HB 2935, but contains procedures and terms that need to be synchronized with HB 2935. Revisions are needed to ensure clarity on Ecology's process for final SMP approval, and the effective date of an updated SMP. At local government request, the effective date of an SMP update is 14 days from Ecology action. This gives local planning departments time to prepare for implementing the new regulations.

Refining appeals procedures will benefit local governments, appellants

A diverse set of interests including applicants, concerned neighbors, business interests, shoreline user groups, and environmental groups may want to appeal a shoreline permit or the approval of an updated SMP. Ensuring that everyone knows when appeals periods start and end will benefit all parties concerned with shoreline management in our state.

More information

Visit the Department of Ecology's Legislative website at http://www.ecy.wa.gov/legislature.html.