

IMPLEMENTATION OF PRIORITY ACTIONS Action Item 3: Shoreline Management Legislation

Prepared and Presented by: Joe Ryan

Proposed Action

Approve Resolution supporting HPA and Green Shorelines Legislation, as well as encouraging stronger shoreline regulations.

Background

Protecting high quality ecological areas is less expensive and more effective than trying to repair or recreate damaged areas. The Shoreline Management Act, Growth Management Act, and Hydraulic Project Approval (“HPA”) legislation are among important regulatory tools for habitat protection.

After legislation signed by Governor Lowry, years of litigation, and negotiations convened by then Attorney General Gregoire, the legislature, in 2003, approved new rules for Shoreline Master Program updates. These new rules greatly enhanced the role of shoreline master plans in protecting ecosystem function. Jurisdictions around Puget Sound are now in the process of updating their shoreline master programs to include these new, more protective, provisions. Providing funding and technical assistance to local jurisdictions for this work is one of the highest priorities in the Action Agenda. A.2(5). In the 2009-2011 state budget, substantial funds were shifted within the Department of Ecology’s budget to support this important work.

Shoreline master programs are an important tool but are not a complete fix for protecting ecosystem function. For example, bulkheads and docks associated with residential development continue to be built. It is estimated that 1.5 miles of Puget Sound shoreline are being hardened each year. As was explained at an earlier Leadership Council meeting, shoreline hardening, among other things, interrupts sediment transfer, resulting in degradation of the food web. The Action Agenda calls for changing the Shoreline Management Act to make it more difficult to construct residential bulkheads and docks. A.2(7). Accomplishing this change in the midst of on-going Shoreline Master Program updates, however, is not widely supported.

One promising approach to reducing the impacts of shoreline armoring is for bulkheads to be built in a greener, softer form, where feasible. The Department of Ecology has developed legislation to pilot this approach, the high level concepts of which are described in an attached memo to the ECB.

The HPA program is administered by the Department of Fish and Wildlife to protect our State’s shoreline and riparian areas when development is conducted there. The HPA process lacks significant civil enforcement authority and is underfunded due to over reliance on the state general fund. Two useful reforms would be to provide for more

robust civil enforcement authority and to instigate a fee for applicants to pay for the HPA permits. In an attached memo provided to the ECB, the high level concepts of potential HPA legislation, as developed by the Department of Fish and Wildlife, are described.

Action Agenda Consistency

Greener Shorelines: A.2(5)

Hydraulic Project Approval Reform: D.4(7)

Stakeholder Input

The Department of Fish and Wildlife has conducted an extensive stakeholder process for the proposed HPA legislation. This stakeholder process is ongoing.

The Department of Ecology is consulting with Local Governments and other stakeholders concerning its proposed Green Shorelines legislation.

In January 2010, the ECB formed a Shoreline Committee. This committee has discussed various alternatives for improving shoreline protections, including changes to the Hydraulic Project Approval process and a pilot project to incentivize softer alternatives to shoreline armoring. The full ECB has discussed these recommendations on two occasions, and is supportive of the high level concepts for these bills, as described in the attached memo to the ECB.

In addition, the ECB Shoreline Committee is supportive of exploring mechanisms to further strengthen shoreline regulations. The ECB Shoreline Committee is keenly interested in finding ways to support implementation of the more challenging aspects of the Action Agenda, including additional limits on residential bulkheads.

Attachments:

- Resolution
- Shoreline Memo to ECB

Resolution 2010-06 Shoreline Protection

WHEREAS, Protecting high quality ecological areas is less expensive and more effective than trying to repair or recreate damaged areas; and

WHEREAS, Assisting local governments to complete and implement Growth Management Act, Critical Area Ordinances, and Shoreline Master Program updates is a top priority of the Action Agenda; and

WHEREAS, The Action Agenda prioritizes the amendment of the Shoreline Management Act and associated rules to be more protective of nearshore environments; and

WHEREAS, The Action Agenda calls for the resolving issues related to the Hydraulic Project Approval (HPA) process including effectiveness, compliance, and enforcement; and

WHEREAS, The Ecosystem Coordination Board has discussed and supports development of legislation to reform the HPA process as well as development of legislation to incentivize softer, greener shoreline replacement projects.

NOW, THEREFORE BE IT RESOLVED, that the Leadership Council supports the efforts of state agencies to strengthen regulatory protection of shoreline areas through improvements to the HPA process including enhancing civil enforcement authority and reducing the program reliance on the state general fund. In addition, the Leadership Council recognizes and supports efforts to incentivize replacement of existing shoreline hardening in freshwater and marine environments in order to increase ecosystem function in those areas. Finally, the Leadership Council encourages the state and its partners to further strengthen shoreline regulations to prevent any additional loss of natural shoreline.

Resolution Moved By: _____

Resolution Seconded By: _____

Approved/Denied/Deferred (underline one)

DATE: November 19, 2010

Shoreline Protection Policy Issues Discussion Agenda Item #02

Prepared by: Joe Ryan

Presented by: David Troutt

Proposed Action: Discussion

Summary:

During its September 10, 2010, meeting the ECB discussed two shoreline legislation proposals in general terms. Below are descriptions of the primary objectives of potential Hydraulic Project Approval legislation and potential Green Shorelines Legislation. Partnership staff and the ECB Shorelines Workgroup are supportive of the primary objectives of these two pieces of legislation; bearing in mind that additional stakeholder processes will be necessary to finalize actual legislative language.

Question for ECB: Do members support moving forward on legislation with the primary objectives below?

Primary Objectives of WDFW's Hydraulic Project Approval (HPA) Legislation:

1. **Increase program efficiencies to enhance permit compliance and effectiveness.**
Resources gained from implementing program efficiencies would allow increased focus on permit compliance and effectiveness monitoring. This objective contains two key elements:
 - a. **Create hydraulic project classifications based on level of potential risk of impact to fish life.** Creating a new class of HPAs for routine, low-risk activities that would require notification and compliance with corresponding rules would allow WDFW to focus individual permitting activities on projects with the highest risk to fish life, as well as on implementing compliance and effectiveness monitoring.
 - b. **Enhance civil enforcement authority.** Current civil enforcement authority would be enhanced to allow WDFW to issue a notice to comply or stop work order when an applicant violates a permit condition or fails to comply with statutory or rule requirements, as well as the ability to levy increased civil penalties.
2. **Clarify existing HPA jurisdiction.** Clarifying WDFW's existing HPA authority would reduce or eliminate uncertainties associated with project types that require an HPA, providing increased certainty for applicants and WDFW staff.
3. **Reduce program reliance on state General Funds.** Developing a fee schedule that would recover about half the cost of administering the HPA program would reduce the

program's current reliance on diminishing state General Funds, distributing the cost of the program between taxpayers and users. Fee revenues would be deposited into a dedicated HPA account and would be used solely for operation of the program, as well as critical compliance and effectiveness monitoring and enforcement activities.

Primary Objectives of Green Shorelines Legislation:

1. **Incentivize softer, greener shoreline replacement projects.**
2. **Create streamlined permitting pilot program for qualifying "green" shoreline replacement projects.** Projects must have specified characteristics to qualify.
3. Pilot program is limited for projects on Lake Washington and Lake Sammamish in King County; and hopefully a pilot area on Puget Sound marine shorelines.
4. A Hydraulic Project Approval (HPA) remains a requirement for qualifying projects. Other local and state environmental permits (e.g., SMA, SEPA and GMA) are not required.
5. The relevant local government and Ecology are provided a 21-day comment period.
6. The streamlined permit procedure will not be used if concerns are identified that cannot be mitigated through an HPA.
7. Ecology and WDFW are directed to work with State Parks and Recreation in assessing green shoreline pilot opportunities on priority Puget Sound parklands.
8. WDFW, PSP and Ecology are to develop recommendations on whether to continue the green shorelines pilot project; and on recommended incentives to support green shoreline projects on other lakes and on marine shorelines.
9. Pilot program will end on September 2013 unless extended by action of the Legislature.