

Shorelines May Be Treated as 'Critical Areas' for Now, Attorney General Says

By Christopher Dunagan

Originally published 12:01 a.m., November 27, 2009

Updated 09:28 p.m., November 27, 2009

OLYMPIA —

The Washington Attorney General's Office is offering moral support to cities and counties that are temporarily using "critical areas ordinances" to protect shoreline environments.

Attorney General Rob McKenna outlined his legal findings in a letter to state Rep. Jan Angel, R-Port Orchard, and Rep. Joel Kretz, R-Wauconda, [who had complained](#) that the departments of Ecology and Commerce were providing inappropriate legal advice to local jurisdictions.

The state Supreme Court has ruled that shoreline regulations must come under a county's shoreline management program, not its critical areas ordinance. One big difference is that the Washington Department of Ecology must approve local shoreline programs.

Confusion has resulted from the Supreme Court ruling, because the court failed to issue a majority opinion of at least five justices, McKenna noted. Local officials were left with a ruling that says shoreline regulations must be adopted under the Shorelines Management Act, but there has been no clear statement about what should happen among jurisdictions that already updated their shoreline rules through a critical areas ordinance.

Meanwhile, different panels of the Washington State Court of Appeals have applied the Supreme Court case in different ways, McKenna said. In Kitsap County, the Court of Appeals said the high court decision requires the county to update its shoreline rules within its shoreline management plan. But in a Clallam County case, the Court of Appeals said the Supreme Court decision should not be used as a precedent in any way.

As a result of the confusion, city and county officials looked to the departments of Ecology and Commerce for guidance, McKenna said.

"The guidance that critical areas ordinances continue to apply within shoreline jurisdiction reflects the best legal interpretation based on the decisions that are currently out there," McKenna wrote in a five-page opinion.

One unusual outcome is that shoreline regulations approved as part of a Critical Areas Ordinance may still be subject to challenge, because they have not been approved by Ecology.

Ecology Director Ted Sturdevant and Commerce Director Rogers Weed said in a joint letter to Angel and Kretz that their guidance is the result of their “best analysis,” but that other interpretations are possible.

The Angel-Kretz letter said the interim guidance would add costs for local governments as they take additional steps to protect shorelines. But Sturdevant and Weed disagreed, saying they were recommending the status quo.

“We support local governments simply leaving their existing adopted CAOs in place and applying them to all the areas they identified as critical areas,” they said. “This includes areas in shoreline jurisdiction.”

For a discussion about water-related issues, check out the blog Watching Our Water Ways at kitsapsun.com.

