

ENVIRONS

The Puget Sound Partnership

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An Environmental Law Update

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One of Washington Governor Christine Gregoire's top priorities is protecting and restoring the environmental health of Puget Sound, and on May 7, 2007, she signed into law a bill creating the Puget Sound Partnership ("the Partnership"). The Partnership is a new state agency charged with overseeing and restoring Puget Sound to a healthy condition by the year 2020.

Genesis of the Partnership

The legislation that created the Partnership, ESSB 5372, grew out of a public-private task force the Governor convened in December 2005. The group met over the course of the past two years, and at the Governor's request, developed a list of recommendations for how to improve the health of Puget Sound. The task force's recommendations included:

- *Cleaning Up Areas With Septic Problems:* by partnering with the private sector and financial assistance to local governments.
- *Substantially Increasing Compliance With Existing Land Use and Water Quality Laws:* by providing funding to state and local governments for enforcement and technical assistance; and providing assistance to local governments updating their Shoreline Master Programs and Critical Areas Ordinances.
- *Accelerating Cleanup of Toxic Sites, Both In-Water and Within One-Half Mile of Puget Sound:* by preventing pollutants from entering the Sound; and using innovative "outcome-focused" state-private partnerships to achieve faster cleanups.
- *Significantly Reducing Polluted Stormwater Runoff:* by implementing and enforcing the recently revised municipal stormwater permit to local governments; providing funding for high-profile, low-impact developments; and providing incentives for pre-1990 developments to reduce polluted stormwater runoff.
- *Protecting Adequate Instream Flows in Puget Sound Rivers:* by developing rules for water use efficiency and water reclamation; expanding financial support and financial incentives for capital investments in reuse and reclamation projects; and requiring

metering and more robust water compliance and enforcement plans in Puget Sound watersheds.

The Legislation

The Partnership officially opened its doors on July 1, 2007. The agency consists of an Executive Director, a Leadership Council, an Ecosystem Coordination Board and a Puget Sound Science Panel. The initial Executive Director is Ron Schultz, former Director of Programs for the Puget Sound Action Team. The Leadership Council consists of seven members, and it will be responsible for adopting and implementing an “action agenda” for restoring Puget Sound. The Governor selected Bill Ruckelshaus to Chair the Leadership Council. The Ecosystem Coordination Board will assist the Leadership Council in developing the action agenda, and will have 23 representatives from a variety of geographic areas, including members of local governments, businesses, environmental interests, counties, cities, port districts, relevant state agencies, Puget Sound Tribes and federal agencies.

The Partnership is tasked with developing the first action agenda by September 1, 2008, and it is likely to be based upon the original recommendations made by the Governor’s public-private task force. The agenda will be implemented through the existing authority of state agencies, local governments, Ports, Tribes and the federal government. To encourage these governmental entities to implement the action agenda, the legislation creates the concept of “Puget Sound partners,” which are “entities that consistently achieve outstanding progress in implementing the action agenda.” “Puget Sound partners” will be given preference for state funding for projects impacting the Puget Sound basin. Additionally, as of 2010, state funds may *not* be allocated to activities “that are in conflict with the action agenda developed by the Puget Sound Partnership.”

To promote the restoration of Puget Sound, the legislature also appropriated \$238 million of targeted funds for Puget Sound activities. This includes \$52.9 million for toxic prevention and cleanup; \$45 million to restore damaged habitat; \$47.5 million to protect existing habitat; \$29 million to reduce stormwater runoff; \$53.8 million to cleanup septic systems and wastewater; and \$6.2 million to promote citizen partnerships.

What Are the Practical Impacts of the Legislation?

The new legislation alone is unlikely to have on-the-ground impacts until the first action agenda is implemented in September 2008. Until the action agenda is developed, local governments, environmental groups and the business community will have a role in developing the agenda and can influence the projects, areas and priorities on which the Partnership will eventually focus. Additionally, while the action agenda is under development, the legislation and associated funding made available are likely to provide increased opportunities for development around Puget Sound. However, there eventually will also be increased environmental standards and enforcement.

- ***Increased Development Opportunities***

The potential increase in opportunities for development is likely to arise from actions agencies took even before the Partnership was convened. For example, the Department of Ecology’s (“Ecology”) Toxic Cleanup Program identified a list of Puget Sound cleanup sites

and sought additional funding and resources to make cleanup of those sites a priority. Ecology's additional resources and goal of expediting cleanup creates opportunities for development of properties around the Puget Sound through strategic public-private partnerships. Indeed, one of the recommendations from the Initiative was the use of "innovative outcome-focused partnerships with private and state entities to achieve faster cleanups." This provides a unique opportunity in which the Governor, the legislature and relevant state agencies are aligned on promoting this kind of development, and they have the funding to see it through.

- ***Increased Environmental Standards and Enforcement***

In terms of increased environmental standards and enforcement, local governments and business are concerned that the Partnership will set the environmental bar higher, but no funds will be provided to allow local governments to reach that higher level of environmental enforcement or compliance. The fear is that the Partnership's action agenda will be an unfunded mandate.

One of the perceived unfunded mandates is related to polluted stormwater runoff. Stormwater runoff is considered a serious threat to the health of Puget Sound. The Puget Sound Initiative group's recommendations envisioned a role for the new Municipal Stormwater Permit (effective January 16, 2007) in reducing polluted runoff to Puget Sound. The Permit requires monitoring for chemicals and toxins previously not required. The cost of this additional monitoring will be borne by the municipalities. In addition, the Permit has new "minimum technical requirements" for development and redevelopment that go beyond what the federal Clean Water Act requires. For example, the Permit requires stormwater runoff from a developed or redeveloped acre or more to match the pre-development condition, and presumes the predevelopment condition was forested land cover. This requires developers to come up with ways to reduce stormwater runoff from impervious surfaces, which can add significant costs to any given development or redevelopment. Not surprisingly, the Permit has been appealed by municipalities, Ports and business interests.

More information about the Puget Sound Partnership can be found on its Web site at: <http://www.pugetsoundpartnership.org/> or by contacting Alexandra Smith (smitha@lanepowell.com or 360.754.6001) of the Environmental Practice Group at Lane Powell.

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