

City of Bainbridge Island
PLANNING & COMMUNITY DEVELOPMENT



MEMORANDUM

TO: Land Use Committee
FROM: Steve Morse, Associate Planner
DATE: October 2, 2009
RE: Annual Review of Critical Areas Ordinance – 2009

Bainbridge Island Municipal Code (BIMC) section 16.20.020 (D) requires that there be an annual review of the Critical Areas Ordinance (CAO) implementation, including the administration of the provisions and impact on critical areas. Meetings have been held with the current planners to identify areas of the ordinance that need revision for a more efficient application of the ordinance provisions. The review indicates that the section relating to geologically hazardous areas (GHA) need further clarification or changes to provide more efficient ordinance administration. This section of the CAO, which was revised in 2007, has now been applied for approximately two years and planners now have experience and understanding of the weakness and problem areas within this section. Council should consider whether amendments to the ordinance are necessary.

Based on the staff review, issues related to the GHA ordinance sections are summarized in the attached matrix.

Discussion on Geologically Hazardous Areas Revision

Each type of critical areas, as defined by the Revised Code of Washington (RCW 36.70A.030), requires different management to response to characteristics of the specific critical area. Not all critical areas require the same type of development restrictions. The Washington Administrative Code (WAC) provides guidance to implement the requirement to manage the different types of critical areas.

WAC 365-190-080 (4)(a) states “Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard. Some geological hazards can be reduced or mitigated by engineering, design, or modified construction or mining practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided.”

The primary characteristic of geologically hazardous area is that these areas may pose a threat to health and safety if development occurs on or near them in an unsafe manner. These areas may also provide other functions to other types of critical areas, such as buffers to streams but these

critical areas functions should be protected by other sections of the CAO. Therefore, part of the proposed amendments to this section of the CAO will be to more clearly make the distinction between GHA land management requirements and other types of critical area management requirements.

Public Participation and Environmental Technical Advisory Committee

If the Council desires to move forward with any changes to the CAO, this must include a process for public involvement. The Land Use Committee may desire to host a public meeting on the topic.

In addition, the Environmental Technical Advisory Committee (ETAC) should be involved in the review process. The ETAC was established in 2001 to advise the Council and Staff on environmental issues. The original resolution provided for a two year term for ETAC and the possibility of six month extension as needed. The former mayor authorized the extensions of ETAC. The City needs to approve a resolution to re-authorize ETAC. The current ETAC members include only one person with a geological background.

Attachment

Review of the Critical Areas Ordinance - 2009

Problem

1. Use of the term “buffer” for geological hazardous areas or areas with GHA concerns.

The use of the term “buffer” has resulted in confusion in managing geological hazardous areas, including using the term “buffer reductions.”

Discussion & Potential Solution

If the primary issue associated with GHAs is safety, then these areas should be managed in manner that promotes safety, while the term “buffer” implies that the management area will remain in an untouched condition, similar to buffer areas for wetland and wildlife habitat areas.

In many cases these safety management areas may also serve as habitat buffers, but these types of buffers should be governed by the appropriate section of the CAO or the Shoreline Management Master Plan (SMMP).

The best available science indicates that is there is some distance from a geologically hazardous area such as a landslide hazard area, where there is a need for caution in development. Currently we define the “buffer” area to be 50 feet, or the height of slope, whichever is greater. Instead of “buffer”, this should define the study area in which the City would require review by a geotechnical engineer to assure that safety is not compromised.

If the area is viewed as the hazard analysis area rather than a GHA buffer, then the issue of buffer reduction for geologically hazardous would be rendered moot. The restriction on development that might impact the GHA would be dependent on the site-specific analysis and recommendation of qualified professionals and subject to staff review, and perhaps third party review.

2. Requirement for a Third Party Review regardless of proposal, and lack of criteria for when a Third Party Review is appropriate.

The requirement for a third party review often requires significant staff time and an additional expense for the applicant, but does not always produce any value.

The use of third party reviews needs to be focused on proposed development that has potential to cause harm. Currently, we require a third party review for any permit within the GHA “buffer” area of a 40% plus slope. As a result, we have required third party review for such things as adding stairs to a deck. Decision criteria related to the potential for damage if slopes fail should be used to determine when to require third party review.

These decision criteria could significantly reduce the number of unnecessary third party reviews, while maintaining the requirement for appropriate development proposals.

<p>3. Requirements for erosion hazard areas and landslide hazard areas should be different. Current GHA requirement incorrectly combined erosion hazard areas with landslide hazard areas. While most erosion hazard areas are the same area as landslide hazard areas, there are several soil types that are erosion hazard areas due to the nature of the soil but are at too low an angle to be considered a landslide hazard.</p>	<p>These areas should have development standards that are separate from landslide hazard areas since the major goal in management of erosion hazard areas is protection of the surface soils.</p>
<p>4. Absolute prohibition of development in specific GHA BIMC 16.20.150(E)(2)(i) provides that slope of forty (40) percent or greater can only be altered based on specific exemption. While the Washington Administration Code (WAC) defines all 40% plus slopes as landslide hazard areas, there is no reason to restrict all development on these slopes if the activity can be done in a safe manner.</p>	<p>As stated in the problem, there is no reason to restrict all development on these slopes if the activity can be done in a safe manner – Consider removing or modifying this restriction</p>
<p>5. Review requirement for activities in zone of influences are inefficient. The zone of influences is the area within either 300 or 200 feet of the top of landslide hazard area. The code currently requires that stormwater plans for development in the zone of influence be reviewed by a geotechnical engineer to determine if the stormwater will have an adverse impact on the landslide hazard area. This requires that both the geotechnical engineer and the civil engineer review and certify.</p>	<p>To increase efficiency and reduce costs, staff proposes that if the stormwater plan is prepared by a licensed civil engineer, that engineer should be able to certify that they are aware of the landslide hazard area and the stormwater management will not have an adverse impact on the landslide hazard area. This would reduce the cost to applicant since they would not have to hire an additional professional.</p>
<p>6. Exemption for interior work for activities inside of buildings requires geotechnical report. Current code allows the City Engineer to exempt minor work conducted on an existing structure. The intent of this exemption was to not require full geotech review for permitted activities that had no potential to impact the stability of the geological hazardous area. However, the exemption citation is located in a section of the code that requires the applicant to first do a geotechnical report to demonstrate that the proposed construction will have no affect on the GHA.</p>	<p>Revise this provision to allow for the exemption without requirement a geotechnical report first.</p>
<p>7. Pre-application meetings are not required for development proposals in GHAs</p>	<p>Different types of GHAs and situation require different processes and reviews. Having a pre-application would allow the staff and applicant to fully understand what the process is and what will be required.</p>
<p>8. Clarify terms relating to landslide hazard. Slopes greater than 40% are listed as landslide hazard areas, while areas mapped as landslide areas are also called landslide hazards area. This leads to confusion since these two types of hazardous areas have different management requirements.</p>	<p>Clarifying the term “landslide hazard area” and specify another term for one of the areas.</p>

9. Subdivision of a property encumbered by liquefaction hazard area.

The current relationship between the subdivision and geohazard ordinances permit subdivision or short platting of property encumbered by landslide hazard area buffers through application of a buffer reduction. These reductions are based upon the applicant being able to provide information on the hazard and the proposed development that indicate the development can be built safely and in accordance with the development standards. The ordinance does *not* permit subdivision or short platting of property encumbered by liquefaction or other seismic hazard areas, even if the development standards for safety can be proven to be met.

Consider revising BIMC 17.12.090.2.b.i. (Flexible Lot Standards) to exclude critical areas such as liquefaction, erosion and seismic hazard areas, or modifying BIMC 16.20.150 to indicate that such areas are do not apply to the flex lot standards.