

City of Bainbridge Island
PLANNING & COMMUNITY DEVELOPMENT



MEMORANDUM

TO: Mayor and City Council

FROM: Steve Morse, Associate Planner

DATE: July 1, 2008

RE: Ordinance 2008-12, Marine Critical Areas Revisions to the Critical Areas Ordinance

Background

In 2006, Ordinance 2005-03, the Critical Areas Ordinance (CAO), was appealed to the Central Puget Sound Growth Hearings Board (CPSGHB) because it did not designate any marine shorelines as critical areas and did not adopt regulations based on best available science to protect functions and values of marine shoreline habitats as required by GMA. The City contracted with Battelle Marine Science Laboratory to review the City's Critical Areas Ordinance (CAO) and Shoreline Management Master Program, and the report concluded that these ordinances did not adequately protect marine critical areas is not consistent with the best available science requirements.

Since the appeal was filed, the CPSGHB has issued a few decisions that have a bearing on the issues presented in the petition. In issuing extensions on the appeal, the Board has indicated that there are Board decisions that have settled some of the issues and science relevant to the appeal of the Bainbridge Island CAO. In January 2008, City Council agreed to process an amendment to the CAO to address marine critical areas.

Marine Critical Area Draft Ordinance and Best Available Science

The revisions proposed for the Critical Areas Ordinance (CAO) are based on the recommendation found in *Protecting Nearshore Habitat and Functions in Puget Sound, An Interim Guide*, Envirovision, Herrera Environmental, and Aquatic Habitat Guideline Working Group. The Aquatic Habitat Working Group is a multi-agency committee which includes participation of the Department of Fish and Wildlife, Ecology, Natural Resources, Transportation, Community Trade and Economic Development, the Recreation and Conservation Office, and the Puget Sound Partnership. This document is consistent with a recommended source of best available science (BAS) as described in WAC 365-195-915. This document was reviewed by the Environmental Technical Advisory Committee (ETAC). Any departures from the recommendation from the Interim Guide are based on additional studies and have been recommended by ETAC.

The Interim Guide addresses each of the types of habitat that are listed in the Washington Administrative Code but limits the recommendations to the three main stressors to the nearshore environment; overwater structures, shoreline armoring and marine riparian vegetation alteration. The guide provides recommendations for each of these activities to protect functions of the nearshore habitat. Since the guide is intended to be used for both protection of critical areas and the updating of shoreline master plans, not all of the recommendations are appropriate for a critical areas ordinance.

The Interim Guide recognizes that the three major stressors to the nearshore environment are changes to the marine riparian vegetation, overwater structures and shoreline armoring. The ordinance is designed to make the following changes.

Riparian Vegetation Alteration

The Interim Guide does not recommend the establishment of buffers on shorelines since this would result in the current development becoming non-compliant, but rather recommends establishing a marine riparian protected area that requires retention of vegetation on the shoreline.

The staff recommends adopting regulations similar to the draft regulations for Thurston County. These regulations require two zones within the designated 200-foot shoreline area: a 100 foot Marine Riparian Habitat Zone in which the primary goal is maintenance of existing vegetation and limits development; and another 100 foot Marine Riparian Management Zone, which allows development but also provides for protection of the vegetation to the greatest extent possible.

Shoreline Stabilization

Shoreline stabilization is heavily regulated by the SMMP, Department of Fish and Wildlife Requirements and the Army Corps of Engineers. Many of the recommendations in the Interim Guide are already being implemented. By policy, the City is currently requiring that it be proven that erosion is a threat and that soft shore methods will not work before a bulkhead is approved. The requirement should be added to the regulations for shoreline armoring.

The two areas where shoreline armoring regulation should be improved to meet the recommendations of the Interim Guide are:

- Limiting bulkheads to protect primary structures for replacement of bulkheads.
- Bulkhead replacement should require the same level of analyses as required by SMMP and policy.

Overwater Structures

As with shoreline armoring, this is an area that is currently heavily regulated by the SMMP, Washington Department of Fish and Wildlife, and the Army Corps of Engineers. Many of the recommendations from the Interim Guide are drawn from Army Corps of Engineers Regional

General Permit Number 6 (RGP6). This clearly spells out requirements for dock construction for residential properties as well as the reason for the various provisions. The best available science for docks can be included by reference to the standards found in the Army Corps of Engineers regulations.

The one area where the Interim Guide seems to be inconsistent with the RGP6 is in the use of treated wood. The Interim Guide states, “The use of treated wood should be avoided altogether”; however the bullet point following discusses the use of ACZA treated wood meeting Post-Treatment procedure. These two statements appear to be somewhat inconsistent. ETAC recommends prohibiting the use of treated wood unless an evaluation of the potential impacts is provided by the applicant that demonstrates there will be no adverse effects to the marine environment resulting from the use of the treated wood. A source of evaluation criteria could be incorporated from *Treated Wood in Aquatic Environments: Technical Review and Use Recommendations*, Stratus Consulting, Boulder Colorado, prepared for NOAA Fisheries, Southwest Divisions, Habitat Conservation Division, Santa Rosa, California. These recommendations include points that should be addressed before treated wood can be used in the marine environment.