

City of Bainbridge Island
PLANNING & COMMUNITY DEVELOPMENT



MEMORANDUM

TO: Mayor and City Council
FROM: Steve Morse, Associate Planner
DATE: January 10, 2008
RE: Critical Areas Ordinance Appeal to the Growth Hearings Board

Background

Ordinance 2005-03, the Critical Areas Ordinance (CAO), was appealed to the Central Puget Sound Growth Hearings Board (CPSGHB). The appellant alleges that the CAO fails to comply with the Growth Management Act (GMA) because it does not designate any marine shorelines as critical areas and does not adopt development regulations based on best available science to protect functions and values of marine shoreline habitats as required by GMA. At the time of passage of Ordinance 2005-03, the City Council believed that the Shoreline Management Master Plan (SMMP) provided protection of the marine critical areas that was consistent with best available science (BAS).

The City contracted with Battelle Marine Science Laboratory to review the City's Critical Areas Ordinance (CAO) and Shoreline Management Master Program to review the protection of marine critical areas and Battelle concluded that utilizing the Shoreline Management Master Program as the document for managing marine critical areas is not consistent with the best available science requirements (WAC 365-195-900 through 365-195-925). The Battelle review was completed in December of 2006.

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 March 2007, the staff presented several potential alternative approaches for addressing marine critical areas and BAS in the revisions to the CAO. The staff recommended providing protection of marine critical areas through management zones along the shoreline. The zone closest to the shore would have more protections for the shoreline. The landward zone would allow for more flexibility in management of that area.

In October, 2007 the Washington Department of Fish and Wildlife (WDFW) released Protecting Nearshore Habitat and Functions in the Puget Sound, An Interim Guide. This document should

be very useful in incorporating best available science in the protection of the nearshore critical areas.

Staff Recommendations

The Critical Areas Ordinance (Bainbridge Island Municipal Code, Chapter 16.20) should be amended to provide regulations that protect marine critical areas, as required by the Growth Management Act and as indicated in recent GMA board decisions.

Purpose

The primary purpose of the amendment is to include regulations in the Critical Area Ordinance that are based on best available science, consider impacts of development to anadromous fish, and provide protection measures that address these impacts as required by RCW 36.70A.172.

Process

The Council should adopt a timeline for the amendment to the Critical Areas Ordinance. As proposed in the attached timeline and flowchart, the first action would be a legislative scoping process to get input from the public on the revisions. At the same time as we are receiving input from the public, the staff will be working with Environmental Technical Advisory Committee (ETAC) on the best available science for nearshore protection. ETAC is a group of professionals that have volunteered to help guide the staff in incorporating BAS in the ordinance revisions.

Best Available Science

The staff believes that a new publication produced by Aquatic Habitat Guidelines Working Group (made up of representatives for Department of Fish and Wildlife, Department of Ecology, Department of Natural Resources, CTED and the Puget Sound Partnership) and entitled Protecting Nearshore Habitat and Functions in the Puget Sound, An Interim Guide, can be used as a basis for the development of the CAO amendments. ETAC will be able to provide guidance in applying the general recommendation in the Interim Guide to more specific language that would be required in an ordinance. The use of the Interim Guide as our BAS should result in a substantial cost saving to the City during this amendment process.

Public Involvement

A critical part of the update to CAO is to keep the public informed and provide opportunities for the public to understand the amendments and provide input during the process. The first opportunity for public input will be during the legislative scoping period. The other opportunities and methods for public involvement that are proposed during the amendment process include:

- Scoping workshop and comment period
- Email notification on request
- SEPA comment period
- Committee work sessions
- Two public hearings

Funding Request

Public outreach is a very necessary component of the amendment process and should include providing accurate information on the goals for the CAO amendment and the potential impacts of

the proposed regulations. This will require the development and distribution of relevant material on an on-going basis. To assist staff in providing accurate and timely information and communication to the public during this process, there is a need for additional funding not budgeted for both communication support and public outreach supplies. The staff is requesting contingency funding of:

Total	\$25,000
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