

Theresa Rice

From: Hal Snow, Jr. [hsnow@gsblaw.com]
Sent: Thursday, February 23, 2012 11:14 AM
To: PCD
Cc: Council; Anne Blair; Sarah Blossom; Steve Bonkowski; Kirsten Hytopoulos; Debbi Lester; Bob Scales; David Ward; Newlon, Thomas A.; Imichaelis@rwta.com; Chris Walker
Subject: MEMORANDUM CITY PC (1052202)_RWTAEdits (2).doc
Attachments: MEMORANDUM CITY PC (1052202)_RWTAEdits (2).pdf

Members of Planning Commission: Attached please find the comments of the Point Monroe Lagoon Homeowner's Association, Inc. on the proposed Single Family Residential (SFR) Mitigation Manual which will be discussed at the Planning Commission meeting this evening.

Thank you,
Hal Snow, President
Point Monroe Lagoon Homeowner's Association, Inc.

MEMORANDUM

TO: City of Bainbridge Planning Commission
FROM: Point Monroe Lagoon Homeowners Association
DATE: February 23, 2012
RE: Comments to the proposed Single Family Residential (SFR) Mitigation Manual dated February 12, 2012

GENERAL COMMENT

Compliance with the dual and equally important mandate of single family residential development being recognized as a preferred use along the shoreline, along with the control of pollution and prevention of damage to the natural environment is a difficult task. See RCW 90.58.020. The cost of new construction or the repair or replacement of existing residences or their appurtenances is made considerably more expensive each time a site specific analysis might be required pursuant to proposed Shoreline Management Program (SMP) section 4.1.2.

It is conceivable that in many instances the cost of the site specific analysis would equal or exceed the cost of the proposed improvement. The improvement might not then be undertaken. In such an instance, both property rights and the environment might be negatively impacted. This would not necessarily be the intended result of the process. A broad reaching opportunity for the owners of shoreline property to adopt a cost effective and practical mitigation plan when developing their properties would be a real aid to the residents of Bainbridge.

SPECIFIC COMMENTS

A. Limited Scope of Mitigation Manual (Manual, Page 2).

The vast majority of the Bainbridge coastline which is privately owned and zoned for residential development is already developed. More than 80% of the existing residences lining the shoreline will be considered nonconforming under their proposed SMP. 100% of the lots and the homes along Point Monroe Drive are nonconforming. Approximately one-half of the homes on Point Monroe Drive are on the Lagoon side of the drive. Twelve to fifteen homes along Lafayette also abut the Lagoon.

All of the described properties, their homes and appurtenances would not be able to take advantage of the Mitigation Manual. They are specifically excluded. The low cost mitigation option will be not be available to the vast majority of waterfront homeowners on Bainbridge. We request that city staff provide to the Planning Commission an estimated number of single family homes, on the island, that will be able to take advantage of this manual and how many single family homes are excluded from being a qualified site.

The manual states that it is intended to apply to the typical waterfront lot. In actuality, this will not be the case. The manual will apply to a small number of the existing waterfront homes and a very few of the undeveloped properties capable of maintaining a single family residence and its appurtenances. The scope and applicability of the manual should be increased so that it applies to a majority of the waterfront homes on Bainbridge. Otherwise, it is a wasted exercise.

B. No Administrative Editing to the Manual (February 16, 2012 Libby Hudson Memo, page two).

The manual will function as a part of the Bainbridge SMP by detailing how mitigation might be conducted in the process of constructing a new home or appurtenant structure or the repair, replacement or remodel of an existing home or appurtenant structure. Any proposed modification to the mitigation standards will, in effect, constitute a modification to the SMP and should be reviewed by the Planning Commission (PC) and the City Council instead of being adjusted administratively by Staff.

C. Make clear that Mitigation Manual Applies to the Repair, Replacement, Remodel of an Existing Single Family Residence (SFR) and the Appurtenant Structures (Manual Table 1, page 4-5).

The language of the manual and the description of replacement in Table 1 does not clearly indicate that the mitigation manual will apply to the repair, remodel, or replacement of an existing SFR or the appurtenant structures. The term "Remodel" can infer that a homeowner is making exterior repairs and/or interior renovations that would not require mitigation. The demolishing and rebuilding of an entire SFR structure should not be considered a remodel. For ease of reading, we recommend that the term "Remodel" be removed and new rows in the table be created to include: "Demolish & Rebuild" and "Addition or Expansion" and that these new rows fall immediately under "New"

MITIGATION REQUIREMENTS

A. Vegetation is Cleared (Manual, Page 6).

We are assuming that the discussion of vegetation clearing relates only to the situation when construction is in process and the cleared vegetation area is not replaced by the addition of new impervious surfaces. Vegetation that is temporarily impacted or removed in the construction process should be capable of being replaced in kind at the end of construction, thereby satisfying the no net loss of ecological functions standard. For instance, during the construction of a rebuild of a previously existing SFR within the same footprint, the requirement to replace vegetation should be limited to what was present prior to the demolition. No additional vegetation would be required as mitigation when there is no new impervious surface being created. Requiring new vegetation mitigation in these circumstances violates the intent of the SMP, constitutes a taking with regards to the property and is confiscatory in nature.

B. Bulkhead Replacement (Manual, Page 8-10).

No additional mitigation should be required by the City when an existing bulkhead is repaired or replaced in compliance with the requirements of the Corps of Engineers and the Washington Department of Fish and Wildlife, and the status quo is maintained. Otherwise, the action goes beyond the SMP requirement of "no net loss," and is punitive and confiscatory. If there is no added increment of harm to shoreline ecological function beyond what allegedly exists with current conditions, no mitigation can legally be required under the SMP. Repairing or replacing a bulkhead in its current configuration adds no increment of harm beyond current conditions and should not trigger a mitigation requirement. Additionally, a logical question arises as to what mitigation is necessary when the existing shoreline conditions seaward of the bulkhead demonstrate that ecological functions are in good working order at that location. An example is the aquatic habitat adjacent to the bulkheads along both sides of Point Monroe Drive. The beach habitat and shoreline have been evaluated for their ecological function and it has been found the beaches on the outside of the sand spit evidence abundant quantity of sand/fish mix ultimately giving way to eel grass. The lagoon on the inside of the sand spit is teeming with life, including a great deal of marine macroinvertebrates such as tube worms that provide habitat along and under the many lagoon docks. Mitigation for mitigation sake when there is no new harm to ecological function from the repair or replacement of an existing bulkhead, not only violates the rights of the homeowner, it is also unnecessary and confiscatory in situations such as the Point Monroe community, where ecological functions are working well.

Requiring off-site mitigation at twice the amount required for on-site mitigation again makes no sense. See the above comment.

Beach mitigation appears to contemplate a multi-year replacement/mitigation obligation. See Manual at page 10. What consideration is given to the probabilities that in subsequent years any "need" for beach nourishment might have no correlation to the bulkhead or the structure adjoining the property. The net result is a mitigation obligation many times in excess of the fill originally placed below the OHWM. This proposal seems to be a tipping of the scale, significantly against the rights of the property owner which will lead to a chilling effect on the ability of a property owner to repair or replace his bulkhead.

C. Aquatic Habitat (Manual, Page 10-12).

The requirement of no net loss of ecological function does not require the City to mandate mitigation when what is already in existence on site is simply being repaired or replaced in its same footprint or configuration. There simply cannot be a "net loss" if after the overwater structure is repaired or replaced, the site remains as it was prior to the repair or replacement. Requiring mitigation in those circumstances will likely result in a loss of use for the property owner and would constitute an unconstitutional taking of property without compensation.

D. Single Use Dock Structure (Manual, Page 12).

The length for a proposed dock is inadequate and appears to be arbitrarily determined when in many off shore areas surrounding Bainbridge the seabed slope is insufficient to accommodate the

draft of the associated vessel after a mere thirty (30) feet from the shoreline. A practical site specific alternative should be adopted.

cc: City of Bainbridge City Council

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