

Salmon help drive CAO debate

By Bob Johns

Even as our region continues to work on a long-term plan for recovering salmon through the Shared Strategy process, efforts are currently underway to impose fairly dramatic changes in local land use policies for the benefit of salmon. The clearest example of this is the process of updating county and city critical areas ordinances (CAOs).

The Growth Management Act (GMA) requires local governments to designate and protect critical areas, including wetlands, fish and wildlife habitat conservation areas and flood-prone areas within their boundaries. The GMA also requires all local jurisdictions to review and, if necessary, update their CAOs. That review is required to “consider best available science,” although local governments can depart from “best available science” if necessary to meet other GMA goals, such as providing an adequate supply of jobs and housing, and protecting property rights. For King and Snohomish counties, and all the cities within those counties, the deadline for completing this review is Dec. 1, 2004.

In addition, the Washington State Department of Community, Trade and Economic Development (CTED) and the Department of Ecology (DOE) view the CAO update process as an opportunity to develop new salmon recovery measures. DOE has published a “Best Available Sciences” report and issued a model ordinance, both of which call for very large increases in critical area buffers, largely for purposes of protecting wildlife habitat. King County has published a similar “Best Available Science” report, and Snohomish County is working on one.

CAOs are being debated throughout Western Washington this year, but perhaps the most contentious debate with potentially the most far-reaching impacts on the homebuilding industry is happening in King County.

At issue is a proposal to dramatically increase wetland buffers. Current buffers range from 25 to 100 feet. DOE and other groups are advocating buffers of 100 to 300 feet, three to four times their current size.

The proposed buffers are excessive because they quickly consume very large buildable areas. This results in dramatically rising land and home prices, further eroding the ability of working families to afford adequate and accessible housing. Increased buffers also run counter to the GMA’s fundamental goals of directing growth toward our urban areas and limiting sprawl. What is more, most of the benefits of a buffer occur close to the wetland or stream, so large increases in buffer widths do not provide a corresponding increase in benefit. Even the DOE and King County Best Available Science reports concede that large increases in buffers have only a minimal benefit, except to the extent that additional undisturbed buffer areas increase wildlife habitat.

Fortunately, King County Executive Ron Sims opted not to support wetland buffer increases inside urban areas as originally proposed. However, to the dismay of many property owners living outside of the urban growth area, the Executive's proposal still calls for the large buffer increases in rural areas. Furthermore, some agencies and groups are still advocating for larger buffers inside the urban areas – a move the MBA strongly opposes.

Another challenging issue in the CAO debate has been the question of how much local jurisdictions should rely on “best available science” when drafting critical areas rules. The GMA requires that local governments include “best available science” in the development of critical areas policies and regulations. However, there is very little agreement on the science behind critical area buffers. For example, MBA is concerned that King County relied on studies conducted in other parts of the country to justify large buffer increases, while ignoring local studies that consider local topography and existing regulations.

While disagreements may exist over the science, the courts have made clear that a local jurisdiction can depart from best available science if it finds that it is necessary to do so in order to comply with any one or more GMA goals, such as encouraging development in urban areas, reducing sprawling low-density development or encouraging the availability of affordable housing.

The Washington State Court of Appeals held that the GMA's “best available science” rule does not require that critical area standards be based on whatever science says may be the most protective standard or that a jurisdiction must adopt rules which are supported or even consistent with the “best available science” (*WEAN v. Island County*). GMA and the State Environmental Policy Act simply require that policy makers consider “best available science” during the decision process.

Other issues impacting the homebuilding industry have been raised in the CAO debate as well, including such things as stream designations, monitoring programs, mass grading and restoration rates. MBA is actively working on solutions to these issues.

MBA will continue to advocate for reasonable critical areas rules that properly balance GMA goals.

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