



CITY OF
BAINBRIDGE ISLAND

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CITY PREVAILS IN LEGAL CHALLENGE TO UPDATED CRITICAL AREAS ORDINANCE (CAO)

Bainbridge Island, Wash., (November, 2018) – The City of Bainbridge Island prevailed this week in a legal challenge by the Kitsap County Association of Realtors and other parties related to the City’s Critical Areas Ordinance (CAO) update and, specifically, the Aquifer Recharge Protection Areas (ARPAs) component of the updated CAO.

The Central Puget Sound Growth Management Hearings Board unanimously upheld the City’s February 2018 update to its CAO by dismissing a Petition for Review filed by the Kitsap County Association of Realtors and other parties (Realtors). In upholding the City’s CAO update, the Board rejected all the Realtors’ challenges and held that the City acted lawfully in enacting [Ordinance No. 2018-01](#).

The CAO is a set of development regulations to designate and protect critical areas, as required by the state’s Growth Management Act (GMA). Under the CAO, an ARPA is defined as “a portion of a development site comprised of native or equivalent vegetation in which existing vegetation, topography and supporting soils are free of development, uses or activities detrimental to the aquifer recharge of the total site area.”

The Board concluded the City met the requirements under the GMA related to public notice and participation, protection of private property rights, and use of best available science in developing the regulations to protect critical areas and aquifer recharge zones.

In upholding the City’s approach to protect the Island’s critical areas and its aquifer system through ARPAs, the Board took notice of the Island’s special environmental character, including that the Environmental Protection Agency has designated “the City’s entire aquifer system as a ‘sole source aquifer’ because it supplies at least 50% of the City’s drinking water.”

“Bainbridge Island is unique in its dependence on aquifers for our water. To make sure we protect our drinking water for generations to come, the Council felt that we needed a

correspondingly unique approach in our Critical Areas Ordinance,” said Mayor Kol Medina. “I’m so pleased that the Board upheld our approach and our community’s right to do everything we can to protect our environmental resources.”

Additionally, in rejecting the Realtors’ challenge related to the scientific basis for the new regulations, including the ARPAs, the Board concluded that the Realtors presented “no scientific argument beyond their own ‘calculations’ to refute the City’s process, data, or conclusions.” The Board also rejected the Realtors’ argument related to what legal standard to apply for protecting critical areas as “wholly without merit.”

“I’m glad that a decision was made by the Board, so that we can now move forward and continue to focus on making this Ordinance work for everyone,” said Deputy Mayor Joe Deets.

If you’d like to read the Board’s decision, please visit the Critical Areas Ordinance Update [webpage](#).

Links:

Ordinance 2018-01: <http://apps.bainbridgewa.gov/weblink8/0/doc/72448/Electronic.aspx>

Critical Areas Ordinance Update: <http://www.bainbridgewa.gov/898/Critical-Areas-Ordinance-Update>

Municipal Code, Chapter 16.20 Critical Areas:
<https://www.codepublishing.com/WA/BainbridgeIsland/#!/BainbridgeIsland16/BainbridgeIsland1620.html#16.20.190>

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