ORDINANCE 2008-12

AN ORDINANCE of the City of Bainbridge Island, pertaining to regulation of marine critical areas; amending Sections 16.20.030, 16.20.040, 16.20.130 of Chapter 16.20 of the Bainbridge Island Municipal Code (BIMC); adding new Section 16.20.065 to BIMC Chapter 16.20; and repealing Section 16.20.260 of BIMC Chapter 16.20.

WHEREAS, BIMC Chapter 16.20 (the Critical Area Ordinance) regulates activities on and adjacent to critical areas; and

WHEREAS, fish and wildlife habitat conservation areas are one type of critical areas recognized in the Growth Management Act (RCW Chapter 36.70A); and

WHEREAS, the Washington Administrative Code (WAC 365-190-080) further defines fish and wildlife conservation areas to include areas with which endangered, threatened, and sensitive species have a primary association, commercial and recreational shellfish areas and kelp and eelgrass beds; herring and smelt spawning areas and waters of the state; and

WHEREAS, on December 14, 2005, the City Council adopted Ordinance No. 2005-03 amending BIMC Chapter 16.20; and

WHEREAS, the Ordinance No. 2005-03 did not include regulation of marine critical areas as it was believed that the Shoreline Management Master Plan provided protection to the marine critical areas that would be consistent with best available science; and

WHEREAS, the Suquamish Tribe filed a petition for review with the Central Puget Sound Growth Hearing Boards on or about February 16, 2006, challenging the validity of Ordinance No. 2005-03 on the issue of protection of marine critical areas; and

WHEREAS, the City contracted with Battelle Marine Laboratory to determine if the protection afforded by the Critical Areas Ordinance and the Shoreline Master Program protect marine critical areas in a way that was consistent with best available science and Battelle determined that the programs were not consistent with best available science; and

WHEREAS, National Marine Fisheries Service (NMFS) has designated all of the nearshore in Puget Sound as critical habitat for the threatened Puget Sound Chinook salmon; and

WHEREAS, this designation makes all of the shorelines of Bainbridge Island a critical areas since NMFS has determined that the Puget Sound Chinook salmon has primary association with the nearshore environment of Puget Sound, and

WHEREAS, best available science rules recommend the use of guidance documents from resources agencies, and

WHEREAS, in October of 2007, the Aquatic Habitat Guidelines Working group, a multi-agency committee with participation form the Departments of Fish and Wildlife, Ecology Natural Resources, Transportation, Community Trade and Economic Development; The Recreation and Conservation Office, and the Puget Sound Partnership, released Protecting Nearshore Habitat and Functions in Puget Sound, an Interim Guide, and

WHEREAS, the City Council desires to provide protection for marine critical areas consistent with best available science now, therefore,

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Section 16.20.030 of BIMC Chapter 16.20 is amended to read as follows:

"16.20.030 Definitions.

A. For the purposes of this chapter, the following definitions shall apply:

1. "Applicant" means a person, corporation, or organization that files an application for a development permit with the City and that is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

2. "Aquifer recharge area" means the surface area of any geological formation sufficiently pervious to provide fresh water to an aquifer through the process of infiltration and percolation.

3. "Base flood" means a general and temporary condition of partial or complete inundation of normally dry land areas having a one percent chance of being equaled or exceeded in any given year. Base flood elevation data is commonly displayed as an elevation line on flood insurance maps, showing the location of the expected whole-foot water-surface elevation of the base (100-year) flood.

4. "Best available science" (BAS) means scientifically valid information derived in accordance with WAC 365-195-905, now or as amended hereafter, that is used to develop and implement critical areas policies or regulations.

5. "Best management practices" (BMPs) means conservation practices or systems of practices and management measures that:

a. Control soil loss and protect water quality from degradation caused by nutrients, animal waste, toxins, and sediment; and

b. Minimize adverse impacts to surface water and groundwater flow, and to the chemical, physical, and biological characteristics of critical areas.
BMPs are defined by the United States Department of Agriculture, the State of Washington Department of Agriculture, the Washington State Department of Ecology, Washington State Department of Health, Kitsap Conservation District, and other professional organizations.
6. "Buffer" means an area adjoining to and a part of a critical area that is required for the continued maintenance, functioning, and/or structural stability of that critical area, or an area adjacent to a stream or wetland that (a) surrounds and protects the functions and values of the stream or wetland from adverse impacts, (b) is an integral part of a stream or wetland ecosystem, and (c) provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland edge, habitat for wildlife, and protection from harmful intrusion, to protect the public from losses suffered when the functions and values of the wetland or stream are degraded.
7. " Category I, II, III, IV wetlands": see "Wetland category".
8. "Critical areas" means aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands.
9. "Critical habitat" means a habitat identified by US Fish and Wildlife Service or the National Marine Fisheries Service as habitat necessary for survival of endangered or threatened species.
10. "Director" means the director of the City's Planning and Community Development Department or his/her designee.
11. "Educational or scientific activities" means controlled and/or supervised scientific activities or educational activities that are associated with an educational program that is approved through a conditional use permit.
12. "Engineering geologist" means a practicing engineering geologist who has at least four years of professional employment as an engineering geologist with experience in landslide evaluation, and a Washington State specialty license in engineering geology as specified in Chapter 18.220 RCW.
13. "Erosion hazard area" means a landform or soil type subject to being worn away by the action of water, wind, freeze-thaw, or ice, and which are:
a. Rated in the Soil Survey of Kitsap County Area, Washington, USDA (1980), as having severe hazard of water erosion, including:
i. Indianola-Kitsap Complex, 45 to 70 percent slope;
ii. Kitsap Silt Loam, 15 to 30 percent slope, 30 to 45 percent slope;
iii. Ragnar Fine Sandy Loam, 15 to 30 percent slope; and
iv. Schneider very gravelly loam, 45 to 70 percent slope;
b. Classified in the Department of Ecology Coast Zone Atlas as:
i. Class 3, class U (unstable) includes severe erosion hazards and rapid surface runoff areas;
ii. Class 4, class UOS (unstable old slides) includes areas having severe limitations due to slope; and
iii. Class 5, class URS (unstable recent slides); and

c. Identified by the USGS Surface Geology Map of Bainbridge Island (Haugerud, 2001) as rilled slopes/scarps.

14. "Existing development" means a development that was lawfully constructed, approved or established prior to the effective date of the ordinance codified in this chapter.

15. "Fish" means species of the vertebrate taxonomic groups *Cephalospidomorphi* and *Osteichthyes*.

16. "Fish and wildlife habitat" means a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These include areas of relative density or species richness, breeding habitat, winter range, and movement corridors. These also include habitats of limited availability or high vulnerability to alteration, such as cliffs, streams and wetlands.

17. "Fisheries biologist" means a person with experience and training in fisheries who is able to submit substantially correct reports on fish population surveys, stream surveys and other related data analyses of fisheries resources. "Substantially correct" means that technical or scientific errors, if any, are minor and do not delay or affect the site plan review process. Qualifications of a fisheries biologist include:

a. Either:

i. Certification by the American Fisheries Society, or;

ii. Bachelor of Science degree in fisheries or the biological sciences from an accredited institution and five years of professional fisheries experience; and

b. The prior successful completion of at least three habitat management plans; and

c. The biologist is listed on a roster of qualified professionals prepared by the Director.

18. "Frequently flooded areas" means lands subject to a one percent or greater chance of flooding in any given year, as determined by the Federal Emergency Management Agency. These areas include, but are not limited to, floodplains adjacent to streams, lakes, coastal areas, and wetlands. (Also see Chapter 15.16 BIMC, Flood Damage Prevention.)

19. "Functions" means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, aesthetic value protection, and recreation. These roles are not listed in order of priority.

20. "Geologically hazardous areas" means areas susceptible to significant erosion, sliding, or other geological events. They pose a threat to the health and safety of citizens when used as sites for incompatible commercial, residential or industrial development. Geologically hazardous areas include erosion hazard areas, landslide hazard areas, and seismic hazard areas.

21. "Geotechnical engineer" means a practicing geotechnical/civil engineer who has a valid Washington engineering license and a valid certificate of

registration in civil engineering, at least four years of professional employment as a geotechnical engineer with experience in landslide evaluation, and appropriate training and experience as specified in Chapter 18.43 RCW.

22. "Habitat Management Plan" (HMP) means a report prepared by a professional wildlife biologist or fisheries biologist which discusses and evaluates critical fish and wildlife habitat functions and identifies and evaluates measures necessary to enhance and improve habitat conservation on a proposed development site.

23. "Habitat of local importance" means a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain their population and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or areas of high vulnerability to alteration, such as cliffs and wetlands.

24. "Hazard tree" means a tree with structural defects likely to cause failure of all or part of the tree, which could strike a "target." A target can be a building or a place where people gather such as a park bench, picnic table, street, or backyard. In the case of steep slopes, a hazard tree can also be a tree that is a hazard to stability of the slope, as determined by a geotechnical engineer.

25. "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as specified in RCW 70.105.010. (Also see BIMC 18.06.450 through 18.06.510).

26. "Hydric soil" means soil which is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

27. "Hydrogeologist" means a practicing hydrogeologist who has at least four years of professional employment as a hydrogeologist with experience in the specific subject area in which they are providing a report, and a Washington specialty license in hydrogeology as specified in RCW Chapter 18.220.

28. "Hydrophyte or hydrophytic vegetation" means plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the "Washington State Wetlands Identification and Delineation Manual (Department of Ecology publication #96-94)" or its most current edition.

29. "Impact of land use" means the relative measure of the intensity of land use used to determine the appropriate buffer widths for wetlands and streams which is categorized as follows:

a. High impact land use includes commercial development, industrial development, institutional development, residential (more than one unit per acre) development, new agriculture (high-intensity such as dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and

maintaining animals), and high-intensity recreation such as golf courses and ballfields.

b. Moderate impact land use includes residential development (1 unit/acre or less), new agriculture (moderate-intensity such as orchard and hay fields), paved trails, and building of logging roads.

c. Low impact land use includes low-intensity open space such as passive recreation, natural resources preservation, and unpaved trails.

30. "Invasive/exotic species" means plants and animals that are not native to the Puget Sound lowlands and are recognized by wetland professionals or biologists to be highly competitive with native vegetation and animals. Invasive/exotic plant species include those listed on the noxious weed list developed by the Washington State Noxious Weed Board, nonnative blackberries and English ivy. Invasive/exotic animal species include any species, such as rats, bullfrogs, zebra mussels and green crabs, considered by resource professionals to be damaging to the native animal populations.

31. "Land divisions" means any of the following: Subdivisions (Chapter 17.04 BIMC); Short Subdivisions (Chapter 17.12 BIMC); and/or Large Lot Plats (Chapter 17.16 BIMC).

32. "Land Use Permit" means any of the following: Planned Unit Developments (Chapter 18.120 BIMC); Conditional Use Permits (Chapter 18.108 BIMC); and/or Site Plan Review (Chapter 18.105 BIMC).

33. "Landslide hazard areas" means areas which are potentially subject to risk of mass movement due to a combination of factors, including historic failures, geologic, topographic, and hydrologic features. Some of these areas are identified in the Department of Ecology Coastal Zone Atlas and USGS Surface Geology Map of Bainbridge Island (Haugerud, 2001). The presence of these factors shall be determined through assessment, by the least intrusive means, by the City Engineer or at the City Engineer's request by a third party geoengineer or geotechnical expert, prior to issuance of any permit. Landslide hazard areas include the following:

a. Areas characterized by slopes greater than 15 percent having springs or groundwater seepage and having impermeable soils (typically silt and clay) overlain or frequently interbedded with permeable granular soils (predominantly sand and gravel);

b. Any area potentially unstable due to rapid stream incision or stream bank erosion;

c. Any area located on an alluvial fan, debris flow deposit, or in a debris flowpath, presently or potentially subject to impacts or inundation by debris flows or deposition of stream-transported sediments;

d. Any area with a slope of 40 percent or greater and with a vertical relief of 10 or more feet except areas composed of competent consolidated rock;

e. Any area designated or mapped as class U, UOS, or URS by the Department of Ecology Coastal Zone Atlas and/or mapped as a landslide or scarp on the USGS Surface Geology Map of Bainbridge Island (Haugerud, 2001); ~~or~~

34. "Liquefaction" means a process in which a water-saturated soil, upon shaking, suddenly loses strength and behaves as a fluid.

35. "Mitigation" includes:

a. Avoiding, minimizing or compensating for adverse impacts, in the following order of preference:

i. Avoiding the impact altogether by not taking a certain action or parts of an action;

ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

iii. Rectifying the impacts by repairing, rehabilitating or restoring the affected environment;

iv. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

vi. Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures; and

b. The following specific categories:

i. Mitigation, Compensatory: replacing project-induced critical area losses or impacts, including, but not limited to, establishment, re-establishment, rehabilitation or enhancement.

ii. Mitigation, Establishment: Mitigation performed to intentionally establish a critical area (e.g., wetland) at a site where it does not currently exist.

iii. Mitigation, Re-Establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former critical area.

iv. Mitigation, Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes to a degraded critical area.

v. Mitigation, Enhancement: The manipulation of the physical, chemical, or biological characteristics of a biological wetland to heighten, intensify or improve specific function(s) or to change for specific purposes such as water quality improvement, flood water retention, or wildlife habitat.

36. "Native or equivalent vegetation" means species which are indigenous to the Puget Sound lowlands ecoregion; or a species that is equivalent in providing the same site-specific functional arrays as would the native species and which is selected from a list of preferred acceptable equivalent vegetation prepared by the Planning Department. Functional arrays may include forage, floodwater restraint, hiding habitat, or other physical or biologic roles in the ecosystem, that singly or in combinations correspond to those of the native species. As with natives, the role mix of an alternative species may vary depending on the site and its surrounding ecosystem. Invasive/exotic species shall not be considered equivalent species.

37. "Normal maintenance" means those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal maintenance includes removing debris from and cutting or manual removal of vegetation in crossing and bridge areas. Normal maintenance does *not* include:
a. Use of fertilizer or pesticide application in wetlands, Fish and Wildlife Habitat Conservation Areas, or their buffers;
b. Re-digging ditches in wetlands or their buffers to expand the depth and width beyond the original ditch dimensions;
c. Re-digging existing drainage ditches in order to drain wetlands on lands not classified as existing and ongoing agriculture under BIMC 16.20.040(C) (Exemptions).
38. "Open space" means undeveloped areas of varied size. Open space often contains distinctive geologic, botanic, zoologic, historic, scenic or other critical area, or natural resource land features.
39. Ordinary high water mark: See the Shoreline Master Program (Chapter 16.12 BIMC), Section II, Definitions.

40. "Ravine" means a V-shaped landform generally having little to no floodplain and normally containing steep slopes, which is deeper than 10 vertical feet as measured from the centerline of the ravine to the top of the slope. Ravines are typically created by the wearing action of streams. The top of the slope is determined where there is a significant change in the slope to generally less that a 15 percent slope.
41. "Reasonable alternative" means an activity that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.
42. "Reasonable use exception (RUE)" is a means of relief that is available for a property that is encumbered to such an extent by critical areas and/or water quality buffers that application of this chapter would deny all reasonable use of the subject property, as further defined by the decision criteria of BIMC 16.20.080.G, and reasonable use of a property cannot be achieved through any other means.
43. "Repair" means activities that restore the character, size, or scope of a project only to the previously authorized condition. <u>For shoreline armoring, it means repair of no greater than 25% of the length of structure in any ten year period and no change in the type of structure.</u>
44. "Seismic hazard areas" means areas subject to severe risk of damage as a result of seismic induced ground shaking, or surface faulting. While ground shaking is the principal risk because the entire island will shake significantly, severe damage will occur where slope failure, liquefaction, and settlement are induced by the shaking and surface rupture is created by fault movement. The following areas are considered seismic hazard areas:
a. Seismic Landslide Hazard Areas - Slopes which are stable in non-earthquake periods, but fail and slide during ground shaking;

b. Liquefaction Hazard Areas - Areas of cohesionless, loose or soft, saturated soils of low density in association with a shallow groundwater table that are subject to settlement and/or liquefaction from ground shaking, or;
c. Fault Hazard Areas - Areas of known surface rupture or significant surface deformation as a result of an active fault movement, including 50 feet on either side.
45. "Site" means the entire lot, series of lots, or parcels on which a development is located or proposed to be located, including all contiguous undeveloped lots or parcels under common ownership.
46. "Streams" means those areas in the City of Bainbridge Island where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other artificial watercourses unless they are used by fish or used to convey streams naturally occurring prior to construction.
47. "Stream Types" means a streams classification system based on fish usage and perennial or seasonal water regime as found in WAC 222-16-030 and meeting the standards listed below.
a. "Type F Stream" means a stream that has suitable fish habitat. If fish usage has not been determined, water having the following characteristics are presumed to have fish use: Streams segments having a defined channel of 2 feet or greater within the bankfull width and having a gradient of 16 percent or less. Determination of fish usage shall use the methodology found in Washington Department of Natural Resource's Forest Practice Board Manual, Section 13.
b. "Type Np" means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
c. "Type Ns" means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to marine waters, Type F, or Np Waters.
48. "Urban natural open space**"** means an open space that (a) a priority species either resides within, or resides adjacent to and uses the open space for breeding and/or regular feeding; and/or (b) functions as a corridor connecting other priority habitats, especially those that would otherwise be isolated;

and/or (c) is an isolated remnant of natural habitat larger than 10 acres and is surrounded by urban development.

"49. "Variance" means relief from the provisions of the habitat buffer standards for wetlands or fish and wildlife habitat conservation areas~~,~~ where strict application of this chapter renders compliance with these provisions an unnecessary hardship by strict application of this Chapter, as provided for in BIMC 16.20.070."

50. "Vegetation Conservation Plan" means a report prepared by a qualified professional that discusses and evaluates the function being provided by riparian vegetation and identifies and evaluates measures necessary to maintain or enhance the identified functions of the vegetation on a proposed development site.

~~50~~. 51. "Wetland" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined in Department of Ecology publication #96-94, Washington State Wetlands Identification and Delineation Manual or the current Washington State Department of Ecology methodology. Wetlands generally include swamps, estuaries, marshes, bogs, and similar areas.

~~51~~. 52. "Wetland boundary" means the boundary or edge of a wetland as delineated using the methodology found in Department of Ecology publication #96-94, Washington State Wetlands Identification and Delineation Manual or Washington State Department of Ecology current methodology.

~~52~~. 53 "Wetland category" means category as defined in "Washington State Wetland Rating System for Western Washington, Revised," Department of Ecology publication #04-06-025, or as revised and adopted by the department.

~~53~~. 54. "Wetland classes" means the classification system of the U.S. Fish and Wildlife Service (Cowardin, et al. 1979).

~~54~~. 55. Wetland Mitigation.

a. In-kind: To replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

b. Off-site: To replace wetlands away from the site on which a wetland has been impacted by a regulated activity.

c. On-site: To replace wetlands at or adjacent to the site on which a wetland has been impacted by a regulated activity.

d. Out-of-kind: To replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement "out-of-category."

~~55.~~ 56. Wetlands, Regulated.

a. "Regulated wetlands" means:

i. All Category I and II wetlands;

ii. All Category III and Category IV wetlands that are greater than 1,000 square feet;

b. Category I, II, III and IV wetlands include:

i. Lands defined as wetlands shall be those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
ii. Wetlands created as mitigation and wetlands modified for approved land use activities.
c. Regulated wetlands do not include artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990 that were unintentionally created as a result of the construction of a road, street, or highway.
~~56.~~ 57. "Wetlands specialist" means a person with experience and training in wetland issues who is able to submit substantially correct reports on wetland delineations, classifications, functional assessments and mitigation plans. "Substantially correct" means that errors, if any, are minor and do not delay or affect the site plan review process. Qualifications of a wetlands specialist include:
a. Either:
i. Certification as a Professional Wetland Scientist (PWS) or Wetland Professional in Training (WPIT) through the Society of Wetland Scientists, or;
ii. Bachelor of science degree in the biological sciences from an accredited institution and five years of professional field experience; and
b. The prior successful completion of at least three wetland reports; and
c. The specialist is listed on a roster of qualified professionals prepared by the Director.
~~57.~~ 58. "Wildlife biologist" means a person with experience and training in the principles of wildlife management and with practical knowledge in the habits, distribution and environmental management of wildlife. Qualifications include:
a. Either:
i. Certification as a professional wildlife biologist through The Wildlife Society, or;
ii. Bachelor of science or bachelor of arts degree in wildlife management, wildlife biology, ecology, zoology, or a related field, from an accredited institution and five years of professional field experience; and
b. The prior successful completion of at least three habitat managements plans; and
c. The biologist is listed on a roster of qualified professionals prepared by the Director.
~~58.~~ 59. "Zone of Influence" means an area, usually upslope from a geologically hazardous area, where changes in land use and hydrology can affect the stability of the geologically hazardous area. The zone of influence is defined as 300 feet upslope from slopes greater than 40 percent, and 200

feet upslope from slopes greater than 15 percent but less than 40 percent that are determined to be geologically hazardous areas."

Section 2. Section 16.20.040(D) of BIMC Chapter 16.20 is amended to read as follows:

"D**.** Standards for existing development.

1. Existing structures and related improvements. Structures and related improvements except shoreline armoring that were legally built or vested prior to the effective date of Ordinance No. 2005-03 that do not meet the setback or buffer requirements of this chapter may continue to exist in their present form, and may be altered, including remodeled, reconstructed, or expanded, if such alteration complies with the provisions of this Section.

2. Existing structures, not located in a geologically hazardous area, that were legally built or vested prior to the effective date of Ordinance No. 2005-03 may be altered if:

a. There is no change in the footprint of the building;

b. The remodel is entirely inside the existing building;

c. There is no further encroachment into the buffers required pursuant to this chapter unless a variance is first approved; or

d. Any expansion of the building footprint is exclusively on the sides that do not touch the buffers.

3. Existing property improvements other than structures and shoreline armoring, including driveways, parking areas, yards, play areas, storage areas, and similar improvements that were legally established or vested prior to the effective date of Ordinance No. 2005-03 may be altered if:

a. There is no change in the location of the improvement;

b. Any alteration of the improvement is entirely inside of the existing boundaries of the improvement;

c. There is no further encroachment into the buffers unless a variance is first approved; or

d. Any increase in the area of the improvement is exclusively on the sides that do not touch the buffers.

4. Alterations permitted by this Section shall not be exempt from applicable city review or permit requirements or other applicable city codes."

Section 3. A new section Section 16.20.065 is added to BIMC Chapter 16.20 to read as follows:

16.20.065 Vegetation Conservation Plan

A. General. A vegetation conservation plan shall comply with the requirements of this section, and shall demonstrate that the functions of

marine riparian critical vegetation are being retained. The director shall prepare performance standards and monitoring guidelines for vegetation conservation plans. All vegetation conservation plans shall be prepared by a landscape architect, horticulturist, or other qualified professionals approved by the director.

B. Intent. The intent of the vegetation conservation plan is to protect the functions being provided by marine riparian vegetation. Functions may be protected by retention of existing vegetation, by planting of appropriate native plants or reduction in effective imperious surfaces.

C. Vegetation Conservation Plan review. All vegetation conservation plans shall be submitted by the applicant to the Washington Department of Fish and Wildlife and to the Suquamish Tribe for review and comment within fifteen (15) calendar days from the date the plan is submitted to said entities.

D. Map. The vegetation conservation plan shall contain a map prepared at an easily readable scale, showing:

1. The location of the proposed development site;
2. Property boundaries;
3. The relationship of the site to surrounding topographic, water features, and cultural features;
4. Proposed building locations;
5. A legend which includes a description of all symbols used, scale, north arrow, and date of map revision.
6. Existing vegetation, type of vegetation and condition.

E. Report. The vegetation conservation plan shall also contain a report which contains:

1. A description of the nature and intensity of the proposed development;
2. An analysis of the effect of the proposed development, activity or land use change upon the existing vegetation on the site and the marine riparian functions provided by this vegetation;
3. A description of how the applicant proposes to mitigate any adverse impacts to marine riparian functions;
4. Geotechnical and slope stability conditions;
5. Presence of hazard zones and other critical areas such as streams or wetlands;
6. Shoreline characteristics (natural or developed);
7. Beach substrate characteristics, including but not limited to presence of forage fish spawning habitat;
8. Presence of eelgrass or marcoalgae in adjacent nearshore habitat;
9. Wildlife use and identified wildlife corridors;

10. Beach aspect and shading provided by affected vegetation;

11. Amount of affected vegetation overhanging the ordinary high water mark;

12. Number of affected trees greater than 4 inches in diameter at breast height that could reach beach when downed;

13. Topography and relationship to the site to streets and developed properties and potential for stormwater input; and

14. Invasive and noxious plants on the site or potentially establishing on the site.

F. Mitigation measures. Possible mitigation measures to be included in the vegetation conservation plan, or required by the director, could include, but are not limited to:

1. Preservation of critically important plants and trees;

2. Seasonal restriction of construction activities;

3. Reduction in the amounts of impervious surfaces;

4. Use of low impact design principles;

5. Establishing phased development requirements; and

6. Monitoring plan for a period necessary to establish that performance standards have been met and maintenance surety approved by the director.

G. Vegetation Conservation Plan adequacy. The vegetation conservation plan shall demonstrate to the satisfaction of the director that the marine riparian functions are maintained by implementation of the plan. If there is a disagreement between the director and the applicant as to the adequacy of the plan, the issue of plan adequacy shall be resolved by consulting with the Washington Department of Fish and Wildlife. If the State agencies are not available in a timely manner, the applicant may choose to have the city refer the plans to a third party consultant at the expense of the applicant. After consultation with such state departments or third party consultant, the director shall make a final decision on the adequacy of the vegetation conservation plan.

H. Timing. A vegetation conservation plan must be developed and approved either prior to preliminary plat approval or prior to issuance of the building permit, as applicable, and must be implemented before the City grants either final plat approval or an occupancy permit, as applicable.

I. Performance and Maintenance Sureties. The director may require that the applicant provide performance and maintenance sureties to ensure conformance with mitigation requirements of the vegetation management plan pursuant to BIMC 16.20.180.

Section 4. Section 16.20.090 of BIMC Chapter 16.20 is amended to read as follows:

"16.20.090 Application requirements.

A. Submittal Requirements. Applications for land use or development proposals within critical areas or their buffers or marine riparian habitat or management zone shall be filed with the information requested on the application forms available from the department of planning and community development. The applicant shall not be granted any approval or permission to conduct development or land use in a critical area, and/or its buffer or marine riparian habitat or management zone prior to fulfilling the requirements of this chapter.

B. Support Information Requirements. When support information is required by the director it shall contain the following and be prepared by one or more of the experts listed in Subsection B.4 of this section:

1. A description of the critical areas on or adjoining the site and how the proposed development will or will not impact critical areas, their buffers, and adjoining properties, including:

a. Drainage, surface and subsurface hydrology, and water quality;

b. Existing vegetation as it relates to wetlands, steep slopes, soil stability, and fish and wildlife habitat value; and

c. Other critical area characteristics and functions.

2. Recommended methods for mitigating impacts and a description of how these methods may impact adjacent properties;

3. Any additional information determined as relevant by the director;

4. Such studies shall be prepared by experts in the area of concern, who shall be selected from a list of approved consultants prepared by the director, as follows:

a. Aquifer recharge study: hydrogeologist;

b. Flood hazard area study: professional civil engineer; hydro-geologist;

c. Geologically hazardous area study: engineering geologist; geotechnical engineer, provided that:

i. An engineering geologist may provide a study, including interpretation, evaluation, analysis, and application of geological information and data and may predict potential or likely changes in types and rates of surficial geologic processes due to proposed changes to a location, provided it does not contain recommended methods for mitigating identified impacts, other than avoidance, structural impacts to, or suitability of civil works; and

ii. Engineering geologists may not provide engineering recommendations or design recommendations, but may contribute to a complete geotechnical report that is co-sealed by a geotechnical engineer.

d. Stream, riparian area, drainage corridor study: biologist with stream ecology expertise; fish or wildlife biologist; a civil engineer

may provide studies for drainage, surface and subsurface hydrology, and water quality;

e. Wetland study: wetlands specialist;

f. Habitat management plans: wildlife biologist and/or fisheries biologist;

g. Vegetation conservation plan: landscape architect, horticulturist or other qualified professionals approved by the director.

5. The director may in some cases retain experts at the applicant's expense to assist in the review of studies; and

6. Such studies shall be prepared in accordance with procedures established by the director or city engineer as specified."

Section 5. Section 16.20.130(C) of BIMC Chapter 16.20 is amended to read as follows:

"C. Development Standards. Regulated uses in designated fish and wildlife habitat conservation areas and/or buffers shall comply with the performance standards outlined in this section.

~~1. Development standards for Marine Critical Areas are defined in the City's Shoreline Master Program, Chapter 16.12 BIMC. The shoreline studies that are currently required from all applicants under the Shoreline Master Program, Chapter 16.12 BIMC, are summarized in Exhibit A. Marine Critical Areas are not subject to Development Standards 2-16 of this Subsection C.~~

1. Marine critical areas development standards apply to all marine shorelines on Bainbridge Island.

a. Marine riparian habitat area.

i. Standard marine riparian habitat area width. Marine riparian habitat areas of 100 feet in width shall be established along all marine shorelines subject to this chapter. The riparian habitat areas shall be measured, on a horizontal plane, landward from the OHWM or, if the OHWM cannot be identified, from the top of the bank. The marine riparian habitat areas shall be retained in their existing condition, except as explicitly authorized by this chapter. Allowed activities for all zones are the same as allowed in native vegetation zones as specified in BIMC 16.12.090 and BIMC 16.12.260(b)(9). If no feasible alternative exists to development beyond allowed activities in the marine riparian habitat area, a person may apply for a reasonable use exception in accordance with BIMC 16.20.080.

ii. Water dependent uses. The director may reduce the standard

marine riparian habitat area to the minimum extent necessary to accommodate water-dependent uses allowed under the Shoreline Master Program. The applicant shall submit a vegetation conservation plan demonstrating that impacts to all marine riparian habitat area functions and marine riparian habitats protected by this chapter will be avoided or, where that is not possible, minimized and mitigated. The director will review this plan in consultation with the Washington Department of Fish and Wildlife and, at the director's discretion, others with expertise prior to approving or denying the proposed habitat area reduction.

iii. Increase in standard riparian habitat area width. If the standard riparian habitat area does not contain dense, continuous vegetation at least 100 feet in width (or, if applicable, the distance specified in subsection 1 (a) or (b) above), the director , in consultation with a qualified professional, may increase the riparian habitat area width up to twenty-five percent as needed to protect the nearshore environment from sedimentation and pollutants.

iv. Implementation of planting plan. In lieu of increasing the riparian habitat area width, the director may allow implementation of a planting plan. This planting plan shall provide for planting of all bare and sparsely vegetated areas of the habitat area on the subject site such that there will be continuous vegetation at least 100 feet in width between the ordinary high water mark and the outer edge of the habitat area. The plan shall provide for planting of grasses, shrubs and trees that are compatible with existing vegetation in the habitat area at densities that will effectively filter/absorb pollutants, excess nutrients, and filter sediment. The applicant shall submit a surety consistent with BIMC 16.20.180 and provide for monitoring and maintenance at appropriate intervals to ensure survival or replacement of the planted vegetation.

b. Marine Riparian Management Zone.

i. A marine riparian management zone shall be established which extends 100 feet, on a horizontal plane, landward from the landward edge of the marine riparian habitat area, as configured prior to any reduction pursuant to BIMC 16.20.130(C)(1)(a)(i). The area where any riparian habitat area reduction occurred shall be included in the management zone.

ii. Development in the marine riparian management zone will be restricted as necessary to minimize adverse impacts to existing vegetation that can have a beneficial impact on marine critical areas, including but not limited to stormwater abatement. This shall be demonstrated by the development and implementation of vegetation conservation plan in accordance with BIMC 16.20.065.

c. Overwater structures: Piers, docks, and floats. Piers, floating docks, mooring buoys, navigational aids and swimming floats are allowed subject to the following:

i. All residential overwater structures shall be in full compliance with Corps of Engineer Regional General Permit Number 6 (or as updated and modified by the Corps of Engineer).

ii. Determination of permitted work periods (work windows) shall recognize the information that is available of fish usage from the City of Bainbridge Island beach seining information.

iii. Toxic substances. Only inert material shall be used in the construction of piers, ramps and floats and other structures proposed to be placed in or over water unless a site-specific ecological risk assessment is developed and the protective measures are approved by the City. A site-specific ecological risk assessment prepared by an environmental toxicologist shall include:

A. · Project description;

B. · Description of ecological receptors including identification of habitat types, biological receptors, and life history descriptions that identify life stages of salmonids likely to find in the area. This description shall include information on species timing developed by the City of Bainbridge Island beach seining information;

C. · Results of quantitative modeling of both short and long term leaching and accumulation of metals;

D. · A qualitative discussion of potential avoidance response of salmonids within the project location;

E. · Include an uncertainly analysis discussing key uncertainties in the risk assessment; and

F. · Factors to be consider in the risk assessment shall include but not be limited to background water quality variables (including but not limited to temperature, hardness, pH, and salinity and current velocity and direction), timing of proposed construction, size of proposed structure in relationship to water body, proximity of other preserved-wood structures, and other sources of contamination that may contribute to cumulative effects.

iv. Fill and armoring shall not be used in the in the construction of piers, ramps, and floats.

v. Loss and disturbance of existing vegetation shall be minimized consistent with BIMC 16.20.065.

vi. All structures should be constructed to minimize the potential for the establishment of suitable substrate for invasives species.

vii. Impacts. The applicant shall demonstrate that the boat ramp, pier, dock and associated parking area and access, coupled with any proposed mitigation, will have the net effect of not adversely impacting salmonid spawning and rearing areas or documented priority wildlife habitats.

viii. Related facilities. Parking areas, restrooms and other facilities related to boat launches, piers, and docks shall be located outside of the marine riparian habitat areas. The facility shall be designed to minimize direct, untreated stormwater runoff from the site into the water body.

ix. Maintenance. Maintenance or replacement of piers, docks, mooring buoys, navigational aids, and swimming floats is permitted provided that hazardous materials are not used, except as provided for through a City approved site specific analysis or upon demonstration that the material does not pose a risk to water quality; and it does not involve an increase in the number of pilings or the overall width and length of the dock or pier.

x. Replacement. Boat launching ramps, piers, floats, and docks may be replaced provided they are not increased in length or width and the construction materials comply with the requirements for new ramps, piers, floats, and docks, as applicable. The existing deck surface area shall be reduced to the maximum extent practical in waters between mean higher high water and mean lower low water.

d. Replacement of shoreline stabilization structures. The following development standards and conditions shall apply to any proposed replacement of existing shoreline stabilization structures (i.e., revetments, bulkheads, seawalls):

i. Alternatives to structures for shore stabilization should be used whenever reasonably possible. Such alternatives may include but are not limited to: no action (allow the shoreline to retreat naturally); drainage controls; and bioengineering erosion control measures (i.e., vegetative stabilization, beach nourishment, drift logs, protective berms).

ii. A structural proposal shall only be considered if the applicant provides a geotechnical analysis from a qualified professional that demonstrates alternatives will not adequately protect the primary structure on the subject property. The director may at his/her discretion

and at the sole cost of the applicant require a third party review of the submitted analysis and alternatives. The costs for such a third party review shall be borne by the applicant. The director may require that the applicant provide a monetary deposit in an amount determined by the director for the costs of such third party review.

iii. The property contains a legally established permanent structure(s) that is threatened by serious wave erosion as demonstrated in a geotechnical analysis submitted by the applicant and prepared by a qualified professional. Replacement of shoreline stabilization structures shall not be permitted to address normal sloughing, erosion of steep bluffs, or shoreline erosion itself, when preservation of existing structures is not a concern. The director may at his/her discretion and at the sole cost of the applicant require a third party review of the submitted analysis. The costs for such a third party review shall be borne by the applicant. The director may require that the applicant provide a monetary deposit in an amount determined by the director for the costs of such third party review.

iv. The proposed stabilization structure or alternative shall not increase erosion on adjacent properties;

v. Shoreline stabilization structures shall not be located/permitted on shores where valuable geohydraulic or biological processes are sensitive to interference and critical to shoreline conservation such as feeder bluffs, marshes, wetlands, or accretion shoreforms such as spits, hooks, bars, or barrier beaches;

vi. A proposed stabilization alternative shall not reduce sediment from feeder bluffs.

vii. The proposal shall not adversely affect critical areas including habitat conservation areas or appropriate mitigation shall be provided to compensate for adverse effects where avoidance is not feasible.

viii. The proposal shall comply with conditions included in any approval from Washington Department of Fish and Wildlife and the Corps of Engineers.

ix. The erosion is not being caused by upland conditions, such as the removal of vegetation or human alteration of existing drainage."

Section 6. Section 16.20.260 of BIMC Chapter 16.20 is hereby deleted.

Section 7. Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 8. Effective Date. This ordinance shall take effect on and be in force five (5) days from and after its passage, approval, and publication as required by law.

PASSED by the City Council this ____ day of _____ 2008.

APPROVED by the Mayor this ____ day of _____ 2008.

_____
Darlene Kordonowy, Mayor

ATTEST/AUTHENTICATE:

_____
Rosalind D. Lassoff, CMC, City Clerk

FILED WITH THE CITY CLERK: _____, 2008
PASSED BY THE CITY COUNCIL: _____, 2008
PUBLISHED: _____, 2008
EFFECTIVE DATE: _____, 2008
ORDINANCE NUMBER: 2008-___