

ORDINANCE NO. 2010-08-050

**AN ORDINANCE AMENDING BELLINGHAM MUNICIPAL CODE SECTIONS 16.55.080, 16.55.130, 16.55.230, 16.55.270, 16.55.330, 16.55.340, 16.55.420, 16.55.460 AND 16.55.510 OF THE CITY OF BELLINGHAM'S CRITICAL AREAS ORDINANCE CREATING AN EXEMPTION FOR DEMOLITION AND CERTAIN DEVELOPMENT IN GEOLOGICALLY HAZARDOUS AREAS AS WELL AS IF SAME DEVELOPMENT IS NONCONFORMING, ALLOW CERTAIN PVIOUS FEATURES IN SETBACKS, ADDITION OF A DEFINITION FOR CRITICAL ROOT ZONE, RELIEF FROM BUFFER STANDARDS IF BUFFER AREAS ARE FUNCTIONALLY DISCONNECTED BY A PUBLIC ROAD AND OTHER NON-SUBSTANTIVE CLARIFICATIONS AND CORRECTIONS.**

**WHEREAS**, on November 21, 2005, the City of Bellingham adopted a Critical Areas Ordinance (CAO) in accordance RCW 36.70A.130 (8)(a); and

**WHEREAS**, exemption thresholds in BMC 16.55.080 and .130 should be amended to allow for expansion and encroachment of additions to existing structures when located partly or wholly within the buffer for a geologically hazardous area, even if subject structure is non-conforming (located within the required buffer); and

**WHEREAS**, BMC 16.55.340 requires clarification that wetland buffer areas that are functionally and effectively cut off from a wetland by a public roadway shall not be subject to the standards in the CAO; and

**WHEREAS**, BMC 16.55.340 should be amended to allow certain pervious features within building setbacks such as patios, driveways and parking areas if they can be engineered as a pervious system as well as allowances for certain water conservation equipment; and

**WHEREAS**, BMC 16.55.420 requires further clarification on lands that do not qualify as a geologically hazardous area based upon slope; and

**WHEREAS**, a definition is required for 'critical root zone' in BMC 16.55.510 based on the proposed amendment to subsection .340 that allows certain features within building setbacks; and

**WHEREAS**, subsections .230, .270, .330 and .460 of the Critical Areas Ordinance require non-substantive clarifications and corrections; and

**WHEREAS**, the Planning Commission held a public hearing on June 10, 2010 and recommended adoption of an ordinance creating an exemption for demolition and certain development in geologically hazardous areas as well as if same development is nonconforming, allows certain pervious features in setbacks, adds a definition for critical root zone, provides relief from buffer standards if buffer areas are functionally disconnected by a public road and other non-substantive clarifications and corrections; and

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**WHEREAS**, the SEPA Official issued a Determination of Non-Significant Environmental Impact on June 9, 2010 for adoption of the ordinance (SEP2010-00022); and

**WHEREAS**, the ordinance was sent out to the appropriate state agencies for expedited review and comment period on June 10, 2010; and

**WHEREAS**, on June 28, 2010, the Department of Commerce confirmed that the state agency notice requirements pursuant to RCW 36.70A.106 have been satisfied; and

**WHEREAS**, the City Council held a public hearing on the ordinance on August 9, 2010.

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**SECTION 1.** Bellingham Municipal Code Section 16.55.080 shall be amended as follows:

**16.55.080 - Exemptions**

A.-C. [NO CHANGE]

D. Exempt Activities. The following activities, developments, and associated uses shall be exempt from the provisions of this Chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements.

1. [NO CHANGE]

2. Normal Operation, Maintenance, Demolition and Deconstruction or Repair.  
Normal maintenance or repair of lawfully established existing buildings, demolition and deconstruction, improvements, utilities, public or private roads, dikes, levees, and drainage systems and landscaping that do not require construction permits, provided the activity does not increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed activity except as specified in subsection a. below. Normal maintenance includes activities performed in accordance with best management practices that are part of normal ongoing maintenance and do not expand further into the critical area and do not directly impact an endangered or threatened species.

a. For instances where any of the activities specified above results in an expansion to an existing structure and said activity is located partly or wholly within the regulated buffer of a geologically hazardous area, as defined, but not within the critical area itself, said activity may be exempt provided:

i. The subject activity is attached to a legally established structure, or,

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ii. If the proposed structure is self supporting (not attached) and requires a building permit, it may not be a new primary or accessory use building, and,

iii. A qualified professional, as defined, demonstrates that there will be no impact to the critical area and that there is no increased risk to health, safety and welfare of the subject property and adjacent properties based upon submittal of the required information in section 16.55.210 and .430 or as required by the Director.

3. [NO CHANGE]

4. Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure. Said modification shall not further alter or increase any code nonconformity or impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement except as specified in subsection D.2.a, above. Restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion.

5.-9. [NO CHANGE]

**10. Fish, Wildlife and Wetland Restoration Activities.** Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation provided that the project is approved by the Washington State Department of Fish and Wildlife, Washington State Department of Ecology, Army Corps of Engineers, or other appropriate local, state, federal, or tribal jurisdiction.

(This is a non-substantive amendment to add the title, "Fish, Wildlife, and Wetland Restoration Activities" to this subsection as is done with the other exemptions.)

11. [NO CHANGE]

**SECTION 2.** Bellingham Municipal Code Section 16.55.130 shall be amended as follows:

**16.55.130 - Nonconformity And Redevelopment**

A. All land uses, buildings, structures, parking, driveways, utilities, stormwater facilities, landscaping and supporting facilities that were lawfully established prior to the adoption of this chapter, but otherwise would be determined to be located within a Critical Area or minimum standard buffer for a Critical Area, shall be deemed as conforming to this chapter. All such uses, structures and facilities may be continued, maintained and replaced as necessary if damaged by fire, accident or natural disaster on a like-for-like or very similar basis, provided

there is no further encroachment into a Critical Area or buffer, except as provided in B. and C., below.

B. [NO CHANGE]

C. Any proposal to expand or change any existing use for land, buildings and facilities described in A. above that involves structural redevelopment of a total of 5000 sq. ft. or more of any lot, parcel or land area shall be required to comply with all provisions of this chapter, except as provided in D. below. Minor revisions in uses, buildings and site plans described in A. above affecting an area of less than 5000 sq. ft. of land area shall be permitted, provided there is no further encroachment into a Critical Area or Critical Area buffer except as specified in subsection 16.55.080 D.2.a for development within a buffer of a geologically hazardous area. Subsequent revisions may occur until a sum total of 5000 sq. ft. of land area change is reached.

D. [NO CHANGE]

E. [NO CHANGE]

**SECTION 3.** Bellingham Municipal Code Section 16.55.230 shall be amended as follows:

**16.55.230 - Signs And Fencing**

A. [NO CHANGE]

B. Fencing.

1. [NO CHANGE]

2. [NO CHANGE]

3. [NO CHANGE]

4. Permanent fencing intended to be in place beyond the duration of a temporary construction fence, shall be placed at the edge of a critical area buffer. Fencing installed within a critical area, unless otherwise allowed in this chapter, requires a Critical Area Permit.

**SECTION 4.** Bellingham Municipal Code Section 16.55.270 shall be amended as follows:

**16.55.270 - Wetlands, Applicability**

A. This chapter shall apply to:

1. [NO CHANGE]

2. All upland buffers to wetlands within the standard buffer widths shown in the tables in Section 16.55.340.

**SECTION 5.** Bellingham Municipal Code Section 16.55.330 shall be amended as follows:

**16.55.330 - Stormwater Management Implications To Wetland Buffers**

A. Stormwater management facilities are not allowed in wetland buffers, with the following exceptions:

1. [NO CHANGE]
2. [NO CHANGE]
3. The facilities or methods specified in 1 and 2 above, are allowed only if impacts to the buffer, resulting from their installation, are avoided or mitigated.

B. [NO CHANGE]

**SECTION 6.** Bellingham Municipal Code Section 16.55.340 shall be amended as follows:

**16.55.340 - Wetland Buffers**

Wetland buffers shall be established to protect the integrity, functions and values of the wetland.

A. [NO CHANGE]

B. Buffer Standards. The buffer standards required by this ordinance presume the existence of a dense vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the Director may increase the standard buffer, requiring buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging. Buffers may not include areas that are functionally and effectively disconnected from the wetland or buffer areas by a public roadway as determined by the Director.

C. Modifications to Buffer Widths. Any modifications to the buffer width are to be based on the specific wetland functions, site and/or watershed characteristics, location of the wetland within the watershed or sub-basin, and the proposed land use.

1. Increasing Buffer Widths. The Director shall have the authority to increase the standard buffer width on a case-by-case basis when a larger buffer is required by an approved habitat management plan as outlined in BMC 16.55.480.D.; or such increase is necessary to:

a.-d. [NO CHANGE]

D.-F. [NO CHANGE]

G. Building Set-backs from Buffers. Unless otherwise provided, buildings and other structures shall be set back a distance of 15 feet from the edges of all critical area buffers or from the edges of all Critical Areas, if no buffers are required, to the extent that the critical root zone of trees in the buffer are not disturbed. The following may be allowed in the building setback area if they do not disturb or cause damage to the existing critical root zone of trees growing in the adjacent critical area buffer:

1.-4. [NO CHANGE]

5. Pervious ground surfaces, such as driveways, patios and parking may be allowed provided that it is engineered as a pervious system as defined in BMC 16.80.050. Such improvements may be subject to the requirements in BMC 15.42, Stormwater.

6. Above and below ground water-conservation cisterns and associated infrastructure, used for residential rainwater catchment but not to exceed 300 square feet total provided that if above ground, the necessary foundation is engineered as a pervious system.

**SECTION 7.** Bellingham Municipal Code Section 16.55.420 shall be amended as follows:

**16.55.420 - Designation Of Specific Hazard Areas**

A. [NO CHANGE]

B. Landslide Hazard Areas. Landslide hazard areas may be prone to landslides and/or subsidence that could include slow to rapid movement of soil, fill materials, rock and other geologic strata resulting in risk of injury or damage to the public and environment. Landslides could result from any combination of soil, slope, topography, underlying geologic structure, hydrology, freeze-thaw, earthquake and other geologic influences. Specific landslide hazard areas include:

1. Those areas identified in soil unit maps and Table 11—Building Site Development of the U.S. Department of Agriculture Soil Conservation Service Soil Survey of Whatcom County Area. They are rated "Severe:" due to "slope" and/or "subsides".

2. Slopes with an incline that is equal to or greater than 40% grade (22 degrees) within a vertical elevation change of at least 10 feet. Slope shall be calculated by

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identifying slopes that have at least 10 feet of vertical elevation change within a horizontal distance of 25 feet or less.

Slope shall not include those lands that have 10-feet of vertical change by virtue of a legally established retaining wall(s), foundation wall, stairways or similar vertical structure or those land areas where public infrastructure and its supporting elements have been developed.

3.-5. [NO CHANGE]

C - D. [NO CHANGE]

**SECTION 8.** Bellingham Municipal Code Section 16.55.460 shall be amended as follows:

**16.55.460 - Performance Standards - Specific Hazards**

A. Erosion and Landslide Hazard Areas. Activities on sites containing erosion or landslide hazards shall meet the standards of Performance Standards – General Requirements [Section 16.55.490] and the specific following requirements:

1.-3. [NO CHANGE]

4. Vegetation Retention. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.

Seasonal Restriction. Clearing shall be allowed only from May 1 to September 30, except as specified in BMC 16.80, Lake Whatcom Reservoir Regulatory Chapter, of each year provided that the City may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the City or the Washington State Department of Natural Resources.

5.-8. [NO CHANGE]

B.-C. [NO CHANGE]

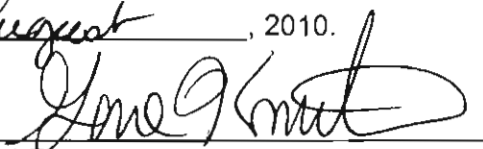
**SECTION 9.** Bellingham Municipal Code Section 16.55.510 shall be amended as follows:

16.55.510 O. Critical Root Zone: That portion of the root zone that is the minimum necessary to maintain vitality and stability of the tree.

All definitions after O, above, would increase by one letter up to MMMM for "Wetland Types."

**SECTION 10.** The effective date of this ordinance shall be September 1, 2010.

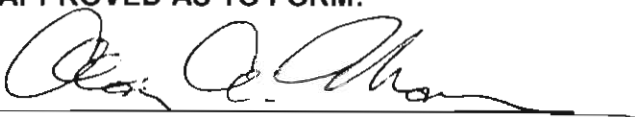
**PASSED** by the Council this 16<sup>th</sup> day of August, 2010.

  
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Council President

**APPROVED** by me this 23<sup>rd</sup> day of August, 2010.

  
\_\_\_\_\_  
Mayor

**ATTEST:**   
\_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**  
  
\_\_\_\_\_  
Office of the City Attorney

*Published 8/20/10*