

ORDINANCE NO. 2008-07-067

AN ORDINANCE AMENDING BELLINGHAM MUNICIPAL CODE SECTION 16.55.080 OF THE CITY OF BELLINGHAM'S CRITICAL AREAS ORDINANCE (CAO) EXEMPTING CERTAIN ESSENTIAL PUBLIC FACILITIES FROM THE STANDARDS IN THE CAO BUT REQUIRING THE FACILITIES TO MEET OTHER STRICT PERFORMANCE STANDARDS.

WHEREAS, the Growth Management Act (RCW 36.70A.200(5)) states that: "No local comprehensive plan or development regulation may preclude the siting of essential public facilities"; and

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, compliance with the standards in the City's CAO will result in certain essential public facilities not being built. Some of these facilities will be too costly to build while others will become impossible to site due to critical area constraints; and

WHEREAS, some local jurisdictions in the State (e.g. King County, Whatcom County, Mill Creek, Tukwila, and others) have adopted exemptions to their critical area ordinances for essential public facilities. However, the City of Bellingham did not include an exemption for essential public facilities in its CAO when it was adopted in November 2005; and

WHEREAS, the Planning Commission held a public hearing on February 7, 2008 to consider an ordinance exempting certain essential public facilities from the standards in the City's CAO but requiring the facilities to meet other strict performance standards; and

WHEREAS, the Planning Commission recommended adoption of the ordinance to ensure the City is able to construct and site all essential public facilities; and

WHEREAS, the SEPA Official has issued a Determination of Non-Significant Environmental Impact (SEP2008-00002) for adoption of an ordinance exempting certain essential public facilities from the CAO provisions; and

WHEREAS, the ordinance exempting certain essential public facilities from the CAO provisions was sent out to the appropriate state agencies for the required sixty day review and comment period on January 14, 2008; and

WHEREAS, the City Council has held a public hearing on the ordinance exempting certain essential public facilities from the CAO provisions on March 17, 2008.

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. Exemption Request and Review Process. The proponent of the activity may submit a written request for exemption to the Director that describes the activity and states the exemption listed in this section that applies.

The Director shall review the exemption request to verify that it complies with this Chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this Chapter. The Director may add conditions for exemption to ensure the level of activity remains consistent with the provisions of this Chapter.

B. Exempt Activities and Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas and their buffers. To be exempt from this Chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense within a reasonable time and in an appropriate manner.

C. Required Use of Best Management Practices. All exempted activities shall be conducted using the best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The City shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense within a reasonable time and in a reasonable manner.

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. – 10. [No Change].

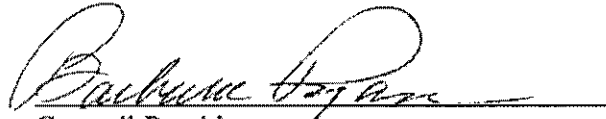
11. Construction of Essential Public Facilities.

- a. Essential Public Facilities Qualifying for Exemption.** Only those essential public facilities listed below may apply for an exemption under this section:
- i. Streets.**
 - 1. James Street multi-modal improvements.
 - 2. San Juan Boulevard.
 - 3. Birchwood Avenue – James Street connector.
 - 4. Horton Road (between Northwest Ave. and Cordata Pkwy.).
 - ii. Water.**
 - 1. Water Treatment Plant expansion.
 - 2. Upper Yew reservoir, pump station, access road and mains.
 - iii. Sewer.**
 - 1. Waste Water Treatment Plant expansion.
 - 2. Meridian Street capacity improvements near Bakerview Rd.
 - iv. Stormwater.**
 - 1. Padden Creek day lighting.
 - v. Trails.**
 - 1. Bay to Baker Trail from Roeder Ave. to City limits.
 - 2. Interurban Trail improvements through Arroyo Park and proposed connections to Woodstock Farm.
 - 3. West Bakerview Trails (between Eliza and Northwest).
 - 4. Aldrich/Horton Trails (in newly annexed area).
 - 5. Padden Creek Trail.
 - 6. Samish Crest Trail.
 - 7. Northridge Park Neighborhood Trail connectors.
 - 8. Cordata Park Neighborhood Trail connectors.
 - vi. Parks.**
 - 1. Northridge Park.
 - 2. Cordata Park.
 - 3. Sunset Pond Park.
- b. Requirements.**
- i.** The proponent of the proposed essential public facility must comply with subsections A through C above; and
 - ii.** The proponent has the burden of showing that:
 - 1. There is no practical alternative to the proposed development with less impact on the City's critical areas;
 - 2. Any proposed alteration of a critical area to construct the essential public facility is the minimum necessary to accommodate the essential public facility;
 - 3. The construction of the essential public facility minimizes the adverse impacts on the critical area; and

4. The construction of the essential public facility utilizes best available science and results in no net loss of function to the type of critical area being impacted.
- c. **Decision.** The Director's decision on the exemption is a Type II decision and shall comply with the provisions of BMC 21.10.110.

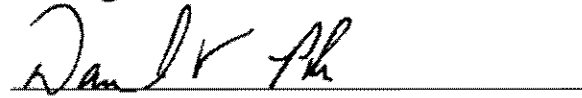
SECTION 2. The effective date of this ordinance shall be September 1, 2008.

PASSED by the Council this 14th day of July, 2008.



Council President

APPROVED by me this 24th day of July, 2008.



Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published: July 18, 2008