

ORDINANCE NO. 2014-04
(formerly Ordinance No. 2013-34)

AN ORDINANCE of the City of Bainbridge Island, Washington, adopting the City of Bainbridge Island Shoreline Master Program Update, including adopting the new shoreline designations map and amending goals, policies and regulations; amendments to the Comprehensive Plan; amendments to Chapters 2.14, 2.16, 18.12, and 18.36 of the Bainbridge Island Municipal Code; and repealing Chapter 16.12 of the Bainbridge Island Municipal Code and adopting a substitute Chapter 16.12 in its place.

WHEREAS, the Washington Shoreline Management Act (RCW 90.58, referred to herein as "SMA") recognizes that shorelines are among the most valuable and fragile resources of the state, and that state and local government must establish a coordinated planning program to address the types and effects of development occurring along shorelines of state-wide significance; and

WHEREAS, the City of Bainbridge Island (the "City") adopted a Comprehensive Plan on September 1, 1994, which establishes goals and policies for managing the land, shorelines and resources areas of Bainbridge Island; and

WHEREAS, on September 19, 1996, the City adopted a Shoreline Master Program (Ordinance No. 96-38), which took effect upon Washington State Department of Ecology approval on November 26, 1996; and

WHEREAS, on June 11, 2003, the City adopted Ordinance No. 2003-25; on September 10, 2003, the City adopted Ordinance No. 2003-30; and on February 23, 2005, the City adopted Ordinance No. 2005-02, each amending the City's Shoreline Master Program; and

WHEREAS, the City is required to update its Shoreline Master Program pursuant to the SMA and WAC 173-26; and

WHEREAS, during March and April, 2010, through four public meetings the City developed a Public Participation Plan with the community to review and update the City's Shoreline Master Program, and the City Council adopted the participation plan on May 12, 2010; and

WHEREAS, there was extensive public participation with respect to updating the City's Shoreline Master Program, including but not limited to the following: holding public forums and open houses, meeting with property owners and forming citizen involvement committees to review and recommend amendments to the designations, policies and regulations of the Shoreline Master Program consistent with the Shoreline Management Act

(RCW 90.58; WAC 173-26) through a succession of 43 public meetings from September 2010 through August 2011; and

WHEREAS, the Planning Commission reviewed the citizen committees' recommendations on amendments to the designations, policies and regulations of the Shoreline Master Program and held seventeen topic-based study sessions and other meetings on the Shoreline Master Program Update from July 2011 through April 2012; and

WHEREAS, on March 2, 2012, a Determination of Non-Significance consistent with the State Environmental Policy Act (RCW 43.21C) was published; and

WHEREAS, on March 29, 2012, the Planning Commission held a public hearing on the Shoreline Master Program Update consistent with WAC 173-26-100, at which time members of the public had the opportunity to present testimony and other evidence in favor of or against the proposed amendment; and

WHEREAS, on April 12, 2012, the Planning Commission considered public testimony and other evidence submitted regarding the proposed Shoreline Master Program Update and recommended approval, and found the proposed amendments consistent with the Shoreline Management Act (RCW 90.58; WAC 173-26); and

WHEREAS, from May 2012 through April 2013, the City Council reviewed the Planning Commission's recommendation relating to the Shoreline Master Program Update and associated amendments and held eleven study sessions (May 22, 2012, June 20, 2012, July 2 and 18, 2012, August 1 and 15, 2012, September 5, 2012, January 16, 2013, February 6, 2013, March 13, 2013, and April 10, 2013), and a duly noticed public hearing on May 8, 2013, and

WHEREAS, on May 15, 2013, the City Council considered public testimony and other evidence submitted regarding the proposed Shoreline Master Program Update; and after giving full consideration of all public testimony and other evidence submitted regarding the Shoreline Master Program Update, recommended approval, finding the proposed amendments consistent with the Shoreline Management Act (RCW 90.58; WAC 173-26); and

WHEREAS, the City Council approved Resolution No. 2013-10 on May 15, 2013, authorizing the Director of Planning and Community Development to forward the proposed Shoreline Master Program Update to the Washington State Department of Ecology for review and comment prior the City's formal adoption of the Shoreline Master Program Update in accordance with WAC 173-26-110, and

WHEREAS, on June 7, 2013, the Shoreline Master Program was submitted to the Washington State Department of Ecology as required by RCW 90.58.090, and Washington State Department of Ecology determined the submittal complete and in compliance with WAC 173-26-100 and 110 on June 20, 2013; and

WHEREAS, in accordance with WAC 173-26-100 and RCW 36.70A.106, a Notice of Intent was transmitted to the Washington State Department of Commerce on June 19, 2013; and

WHEREAS, on November 20, 2013 the City Council held a duly noticed public hearing to consider Washington Department of Ecology draft amendments provided to the City on October 16, October 25 and November 15, 2013; and staff-recommended alternative language to the Shoreline Master Program submitted to the Department of Ecology on June 7, 2013; and

WHEREAS, on November 21, 2013, the City notified the Department of Ecology that at the November 20, 2013 public hearing, the City Council had accepted Ecology's draft required amendments, draft recommended amendments and staff's alternative language, as amended by the Council; and

WHEREAS, the Washington State Department of Ecology subsequently notified the City that there would be additional required and recommended changes; and

WHEREAS, the City Council conducted two public workshops on March 24, 2014 and April 28, 2014, to discuss the additional changes from the Washington State Department of Ecology; and

WHEREAS, on June 23, 2014 the City received the Shoreline Master Program Preliminary Approval letter from the Department of Ecology; and

WHEREAS, on July 14, 2014 the City Council held a duly noticed public hearing on all components of the Shoreline Master Program update, and on July 14, 2014 approved Washington Department of Ecology final amendments to the Shoreline Master Program;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN, AS FOLLOWS:

Section 1. The City Council hereby concludes the following with regard to the 2012 Shoreline Master Program adopted and approved in this ordinance:

- A. Implementation of the Shoreline Master Program Update will result in "no net loss" of shoreline ecological functions relative to the established baseline and may ultimately produce an improvement in shoreline ecological functions through incentive-based restoration; and
- B. The Shoreline Master Program Update is consistent with and meets the State Shoreline Master Program Guidelines established under Chapter 173-26WAC; and
- C. The Shoreline Master Program Update is consistent with and implements the Shoreline Management Act (Chapter 90.58 RCW) and the Growth Management Act (Chapter 36.70A RCW).
- D. The Shoreline Master Program Update is consistent with the Bainbridge Island Comprehensive Plan; and
- E. The Shoreline Master Program Update is internally consistent; and

F. Based upon an analysis prepared by the Interim City Attorney and presented under attorney-client privilege, the Shoreline Master Program Update will not constitute an unconstitutional taking of private property in violation of RCW 36.70A.020(9), RCW 36.70A.370, and the Washington State Attorney General's "Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property."

Section 2. Chapter 16.12 of the City of Bainbridge Island Municipal Code is hereby repealed in its entirety.

Section 3. The City Council hereby adopts the amended City of Bainbridge Island Shoreline Master Program, including new Shoreline Designations Map and Appendices, a copy of which is attached to this ordinance as Exhibit 1 and incorporated herein by this reference. Pursuant to RCW 36.70A.480(1), the shoreline goals and policies set forth in Exhibit 1 shall be an element of the City of Bainbridge Island Comprehensive Plan. Also pursuant to RCW 36.70A.480(1), all other provisions of the Shoreline Master Program attached as Exhibit 1, including use regulations, shall be a part of the City's development regulations and shall be codified as a new Chapter 16.12 of the Bainbridge Island Municipal Code. The Director of Planning and Community Development shall work with the codifier of the Bainbridge Island Municipal Code in order to ensure that the regulations in the Shoreline Master Program are appropriately codified and that the goals and policies are appropriately incorporated into the Comprehensive Plan.

Section 4. In addition to the shoreline element amendments adopted in Section 3, the City of Bainbridge Island Comprehensive Plan is hereby amended to include those policy amendments and additions set forth in Exhibit 2 attached to this ordinance and incorporated herein by this reference. The policy amendments and additions include amendments to Policy W 6.5 of the Land Use Element, Policy WMP 2-3.8 of the Land Use Chapter of the Winslow Master Plan, and Policy WMP 2-10.2 of the Land Use Chapter of the Winslow Master Plan; the addition of a new section in the Environmental Element; and the addition of a new Policy WMP 2-6 in the Land Use Element of the Winslow Master Plan.

Section 5. Chapters 2.14 and 2.16 of the City of Bainbridge Island Municipal Code are hereby amended to read as set forth in Exhibit 3 attached to this ordinance and incorporated herein by this reference.

Section 6. Chapters 18.12 and 18.36 of the City of Bainbridge Island Municipal Code are hereby amended to read as set forth in Exhibit 4 attached to this ordinance and incorporated herein by this reference.

Section 7. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 8. This ordinance shall take effect upon the date of a letter to the City of Bainbridge Island from the Washington State Department of Ecology approving the Shoreline Master Program Update adopted by this ordinance.

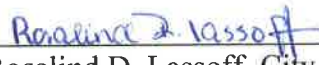
PASSED by the City Council this 14th day of July 2014.

APPROVED by the Mayor this 14th day of July, 2014.



Anne S. Blair, Mayor

ATTEST/AUTHENTICATE:



Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:

October 25, 2013

July 14, 2014

July 18, 2014

This ordinance shall take effect upon the date of a letter to the City of Bainbridge Island from the Washington State Department of Ecology approving the Shoreline Master Program Update adopted by this ordinance.
2014-04

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