

**CITY OF BINGEN, WASHINGTON**

**ORDINANCE NO. 2015-06-646**

**AN ORDINANCE AMENDING BINGEN MUNICIPAL CODE 17.65 CRITICAL AREAS, 17.66 SLOPE HAZARD OVERLAY ZONE, AND 17.67 WETLANDS AND WETLAND BUFFERS**

**WHEREAS**, the Growth Management Act (GMA) requires the adoption of development regulations that designate and protect critical areas in accordance with RCW 36.70A.60 and RCW 36.70A.170; and

**WHEREAS**, the City of Bingen has previously adopted Critical Areas Ordinances in October of 1997; and

**WHEREAS**, Section 36.70A.130(1) RCW requires the City of Bingen to take legislative action to review its critical area designations and its development regulations protecting critical areas and to revise them if needed to comply with the requirements in Chapter 36.70A RCW; and

**WHEREAS**, in 1995, the GMA was amended to require that cities and counties must substantively consider best available science in developing policies and development regulations to protect the functions and values of critical areas and to give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries [RCW 36.70A.172]; and

**WHEREAS**, the City of Bingen has conducted a review of its existing critical areas regulations together with a review of best available science; and

**WHEREAS**, Title 365-190 WAC contains provisions for the Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas; and

**WHEREAS**, Title 365-195 WAC contains procedural criteria for determining and including Best Available Science in development regulations; and

**WHEREAS**, the GMA requires a process of early and continuous citizen participation for amending comprehensive plans and development regulations; and

**WHEREAS**, the City of Bingen has invited public participation and comments via an open house, public meetings, public notices and the use of the City's website for disseminating information; and

**WHEREAS**, the City of Bingen has made findings of fact relating to critical area designations and development regulations referenced in this ordinance supporting said amendments which are set forth below for adoption.

**NOW, THEREFORE**, the City Council of the City of Bingen do ordain as follows:

**Section 1.** **Findings.** For purposes of effective land use planning, the City of Bingen City Council adopts the following legislative findings of fact:

**A. General Findings**

1. The Revised Code of Washington (RCW) 36.70A.060 and RCW 36.70A.170 require counties and cities to designate critical areas and adopt regulations to protect them.
2. Critical areas are defined by RCW 36.70A.030(5) to include wetlands, areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flood areas; and geologically hazardous areas. These critical areas are further defined and described by Chapter 36.70A RCW and rules codified at Chapter 365-190 WAC.

3. The City of Bingen prepared an analysis (*The Watershed Company, October 2014. Gap Analysis Report: City of Bingen Critical Areas Ordinance*) of critical areas designations and the development regulations that protect critical areas currently in effect in the City of Bingen for consistency with the requirements of Chapter 36.70A RCW, including best available science as included in Attachment A: Best Available Science and Information List.

4. Based on input from the public in the open house process and analysis and issues identified, the City of Bingen prepared Preliminary Draft Critical Areas Ordinances and released them for public comment in December 2014.

5. The City of Bingen has provided the opportunity for early and continuous public participation, comment and consideration through a open house, public notices, public hearings and providing information on the City of Bingen's website. The opportunities for public participation included:

- Open house seeking public input on October 29, 2014
- Review and discussion of preliminary ordinances on December 16, 2014
- Public hearing January 6, 2015
- Public hearing on May 5, 2015
- Public hearing on July 21, 2015

6. In formulating the development regulations adopted by this ordinance, the City of Bingen has considered the fourteen (14) goals contained in RCW 36.70A.020 providing guidance for the development and adoption of development regulations. These goals are:

a. Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

b. **Reduce Sprawl.** Reduce the inappropriate conversion of underdeveloped land into sprawling, low-density development.

c. **Transportation.** Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

d. **Housing.** Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

e. **Economic Development.** Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic development opportunity for all citizens of this state, especially for unemployed and disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

f. **Property Rights.** Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

g. **Permits.** Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

h. **Natural Resources Industries.** Maintain and enhance natural resource-based industries, including productive timber, agriculture, and fisheries industries. Encourage the conservation of productive forest lands and productive governmental lands, and discourage incompatible uses.

i. **Open Space and Recreation.** Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resources lands and water, and develop parks.

j. **Environment.** Protect the environment and enhance quality and the availability of water.

k. **Citizen Participation and Coordination.** Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

l. **Public Facilities and Services.** Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

m. **Historic Preservation.** Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

n. **Shoreline.** Manage shorelines wisely according to the goals in the Shorelines Management Act (Chapter 36.70A.020 RCW).

7. The City of Bingen City Council has weighed the goals contained in RCW 36.70A.020 as they apply to the subject matter of this ordinance and have attempted to reach a reasonable balance of these goals in fulfilling its duty to protect critical areas through adoption of this ordinance.

8. On May 12, 2015 notice was provided to the Washington State Department of Commerce on the intent to adopt revised development regulations applicable to critical areas in conformance with RCW 36.70A.106.

9. On June 29, 2015, the City of Bingen issued a SEPA threshold Determination of Nonsignificance.

10. The critical areas ordinances are intended to protect the general public, resources and facilities from injury, loss of life, property damage or financial loss due to flooding, landslides, or steep slopes failure.

11. The findings and the record generated in the public hearing process and at the adoption of this ordinance show that this measure is consistent with the GMA goals.

12. The City of Bingen City Council believes adopting the amendments is necessary for the preservation of the public health, safety, and general welfare of City of Bingen residents.

13. The City of Bingen City Council finds that the amendments in this ordinance were developed through an analysis of the evidence in the record, including scientific analysis and documentation, involving a reasoned process.

14. Where the critical areas protections in this ordinance vary from the best available science, the City of Bingen followed a reasoned process supported by local circumstances that allow localized impacts on critical areas that will be used sparingly and for good cause.

15. The City of Bingen City Council has reviewed existing critical area regulations from neighboring jurisdictions in Klickitat County and finds that similar standards are in these critical areas regulations as are being adopted with this ordinance.

16. Consistent with direction provided by WAC 365-190-080(4), the City of Bingen has prepared and disseminated maps of critical areas. These maps are only for information or illustrative purposes only.

### **B. Wetlands**

1. Wetlands and streams are environmentally sensitive and serve numerous natural functions and values. These functions include: wildlife and fisheries habitat; water quality protection; flood protection; shoreline stabilization; stream flow; and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

2. The scientific literature supports the inclusion of protection buffers for wetlands to provide sediment control and nutrient inputs to wetlands, and to protect important wetland functions.

3. Wetlands are identified in accordance with the approved federal wetland delineation manual and applicable regional supplements, and rated according to the Washington Department of Ecology (Ecology) wetland rating system, as set forth in the *Washington State Wetland Rating System for Eastern Washington – 2014 Update* (Ecology Publication #14-06-030, October 2014, or as revised and approved by Ecology).

4. The scientific literature supports protective buffers from 25 to 300 feet of relatively intact native vegetation to adequately protect wetland functions and values.

5. Appropriate wetland mitigation ratios – ratios of wetland replacement and enhancement to that altered or destroyed – are established in *Wetlands & CAO Updates: Guidance for Small Cities, Eastern Washington Version* (Ecology 2010).

6. In determining what critical areas are to be afforded a particular degree of protection, the City of Bingen has evaluated a wide range of the best available science with respect to wetlands to make informed decisions that meet the intent of the GMA and that are also reflective of local needs.

7. The sources of best available science that were evaluated and included in the development of regulatory standards for wetlands areas are included in Attachment A: *City of Newcastle Comprehensive Plan Update, Best Available Science Review* (The Watershed Company 2014).

### **C. Critical Aquifer Recharge Areas**

1. WAC 365-190-080 defines wellhead protection areas, sole source aquifers, special protection areas, and other areas that are susceptible or vulnerable to ground water contamination as areas with a critical recharging effect on aquifers used for potable water (also referred to as critical aquifer recharge areas).

2. Potable water is an essential life-sustaining element.

3. Much of the City of Bingen's drinking water comes from ground water supplies.

4. Once ground water is contaminated it is difficult, costly and sometimes impossible to clean up.

5. Preventing ground water contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people.

6. *Guidance Document for Establishment of Critical Aquifer Recharge Area Ordinances*, by Ecology, 2000, includes scientific recommendations for protecting ground water, including limiting certain uses and the intensity of development in critical aquifer recharge areas.



7. In determining what critical areas are to be afforded a particular degree of protection, the City of Bingen has evaluated a wide range of the best available science with respect to aquifer recharge areas to make informed decisions that meet the intent of the GMA and that are also reflective of local needs.

8. The sources of best available science that were evaluated and included in the development of regulatory standards for critical aquifer recharge areas are included in Attachment A: *City of Woodinville Comprehensive Plan Update, Best Available Science Review* (The Watershed Company 2014).

9. A critical aquifer recharge area is not designated in the City of Bingen based on consideration of the best available science and local conditions.

#### **D. Frequently Flooded Areas**

1. Flood hazard areas are subject to periodic inundation that results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. These flood losses are caused by development in areas prone to inundation that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

3. Floodplain and stream connectivity are major elements in maintaining healthy riparian habitat and off-channel habitats for the survival of fish species and conveyance of floodwaters. If river, floodplains, and other system are not viewed holistically as biological

geomorphological units, this can lead to serious degradation of habitat and increase flood hazards, which in turn can contribute to listing of various fish species as threatened or endangered and result in extraordinary public expenditures for flood protection and relief.

4. Frequently flooded areas, including the 100-year floodplain and the floodway, are commonly mapped on flood insurance maps, often know as Flood Insurance Rate Maps, or FIRMs.

5. Providing protection measures for frequently flooded areas enables the City of Bingen to meet the requirements of the National Flood Insurance program and as an eligible community for federal flood insurance benefits.

6. In determining what critical areas are to be afforded a particular degree of protection, the City of Bingen has evaluated a wide range of the best available science with respect to frequently flooded areas to make informed decisions that meet the intent of the GMA and that are also reflective of local needs.

7. The sources of best available science that were evaluated and included in the development of regulatory standards for frequently flooded areas are included in Attachment A: *City of Newcastle Comprehensive Plan Update, Best Available Science Review* (The Watershed Company 2014).

8. Chapter 15.16, Flood Hazard Protections includes additional provisions for developing in special flood hazard areas, to minimize losses due to flood conditions by providing minimum standards for sites with flood areas, or sites that will affect identified flood hazard areas.

### **E. Geologically Hazardous Areas**

1. Geologically hazardous areas are subject to periodic geological events that result in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. Geologic hazards may be exacerbated by development and human activity in sensitive areas. Impacts resulting from geological hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard.

3. Some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows.

4. In determining what critical areas are to be afforded a particular degree of protection, the City of Bingen has evaluated a wide range of the best available science with respect to geologically hazardous areas to be make informed decisions that meet the intent of the GMA and that are also reflective of local needs.

5. The sources of best available science that were evaluated and included in the development of regulatory standards for geologically hazardous areas are included in Attachment A: *City of Newcastle Comprehensive Plan Update, Best Available Science Review* (The Watershed Company October 2014).

### **F. Fish and Wildlife Habitat Conservation Areas**

1. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit the City of Bingen and its residents, including but not limited to: maintaining species diversity and genetic diversity; providing opportunities for food, cover,

nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

2. Wetlands and streams are environmentally sensitive and serve numerous natural functions and values. These functions include: wildlife and fisheries habitat, water quality protection, flood protection, shoreline stabilization, stream flow, and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced.

3. The scientific literature supports the inclusion of protective from streams to provide sediment control, nutrient inputs to downstream waters, large woody debris, and other functions important to riparian areas.

4. The Washington Department of Fish and Wildlife (WDFW) has prepared management recommendation for the preservation of priority habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

5. Salmonid and anadromous fish may be more impacted by development and human activity during some times than others. Such times are referred to as “fish windows,” which have been documented by WDFW.

6. Washington Department of Natural Resources (DNR) has classified watercourses according to two stream-typing systems based on channel width, fish use, and perennial or intermittent status.

7. WAC 365-190-130 grants the City of Bingen the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect “all individuals of all species at all times.”

8. In determining what critical areas are to be afforded a particular degree of protection, the City of Bingen has evaluated a wide range of the best available science with respect to fish and wildlife habitat conservation areas to make informed decisions that meet the intent of the GMA and that are also reflective of local needs.

9. The sources of best available science that were evaluated and included in the development of regulatory standards for fish and wildlife habitat conservation areas are included in Attachment A: *City of Newcastle Comprehensive Plan Update, Best Available Science Review* (The Watershed Company 2014).

**Section 2.** **Best Available Science.** The best available science and other information included and considered for this record is documented in Attachment A to this ordinance.

**Section 3.** BMC 17.65, BMC 17.66 and BMC 17.67 incorporated here by reference and by such incorporation set forth at full length, is hereby repealed.

**Section 4.** Bingen Municipal Code 17.65 is hereby amended as shown in Attachment B to this ordinance.

**Section 5.** **Severability.** If any section, subsection, sentence, clause, phrase or other portion of this ordinance or its application to any person is, for any reason, declared invalid, illegal or unconstitutional in whole or in part by any court of agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BINGEN, and effective five (5) days after the first date of posting or publication.**

**DATED** this 21<sup>st</sup> day of July, 2015.

ATTEST:

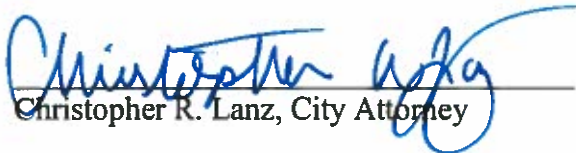


Mayor Betty J. Barnes



Jan Brending, City Clerk

Approved as to form only:



Christopher R. Lanz, City Attorney