

RESOLUTION NO. 2020-16

A **RESOLUTION** of the City of Bainbridge Island, Washington, withdrawing the City's request for the Washington State Department of Ecology to approve Ordinance No. 2016-06 relating to the Shoreline Master Program limited amendment regarding aquaculture policies and regulations that the City has been pursuing since 2016 with the Department of Ecology.

WHEREAS, the City's Shoreline Master Program ("SMP") Update was approved by the Department of Ecology ("Ecology") on July 16, 2014 and became effective on July 30, 2014; and

WHEREAS, on October 6, 2014, the Bainbridge Alliance for Puget Sound, the Association of Bainbridge Communities, and the Coalition to Protect Puget Sound Habitat ("Alliance") filed a Petition for Review with the Washington State Growth Management Hearings Board ("GMHB")(Case No. 14-3-0011); and

WHEREAS, the Alliance, by and through its Petition, alleged that the City's SMP regulations relating to aquaculture were not consistent with the Washington State Shoreline Management Act ("SMA") and in conflict with certain sections of Washington Administrative Code ("WAC") Chapter 173-26; and

WHEREAS, on November 5, 2014, the Pacific Cost Shellfish Growers Association ("PCSGA") moved to intervene in the above-described litigation in order to ensure that its interests would not be impaired thereby; and

WHEREAS, at its December 9, 2014 regular business meeting, the City Council passed a motion directing the Department of Planning and Community Development to prepare an amendment to the July 30, 2014 SMP related to aquaculture to bring the aquaculture regulations into alignment with the language contained in the June 7, 2013 version of the SMP pertaining to aquaculture regulations; and

WHEREAS, as a result of the City Council's December 9, 2014 direction, and in order to obtain the GMHB's approval of an extension of the hearing on the merits, the City, the Alliance, and PCSGA ("Parties") agreed to enter into settlement discussions; and

WHEREAS, the Parties met several times between January 2015 and January 2016 to identify revisions to the SMP's aquaculture regulations that would further the City Council's December 9, 2014 direction while balancing the interests of the Parties; and

WHEREAS, the City drafted proposed Ordinance No. 2016-06 to revise the SMP's aquaculture regulations and the City believed that those revisions ("Revisions") represented the City's best efforts to comply with the City Council's December 9, 2014 direction while balancing the interests of the Parties; and

WHEREAS, the Planning Commission reviewed the Revisions at a study session on March 24, 2016; and

WHEREAS, the Planning Commission conducted a public hearing on the Revisions contained in proposed Ordinance No. 2016-06 on April 14, 2016; and

WHEREAS, the City Council reviewed the Revisions at a business meeting on June 14, 2016 and June 28, 2016; and

WHEREAS, the City Council conducted a public hearing on proposed Ordinance No. 2016-06 on July 26, 2016 that was continued to August 23, 2016; and

WHEREAS, the City Council reviewed the Revisions at a business meeting on September 13, 2016 and September 27, 2016; and

WHEREAS, on October 11, 2016, the City Council enacted Ordinance No. 2016-06 and the ordinance has never become effective because it has a provision stating that the ordinance will take effect upon approval from Ecology of the City's aquaculture limited amendment and that approval from Ecology has not occurred; and

WHEREAS, the City submitted Ordinance No. 2016-06 to Ecology in October 2016 following the WAC 173-26-100 submittal package requirements; and

WHEREAS, public comments on Ordinance No. 2016-06 were accepted by Ecology in 2017; and

WHEREAS, following a June 2019 Growth Management Hearings Board decision rejecting Ecology's approval of proposed aquaculture restrictions enacted by Pierce County, on September 26, 2019, Ecology provided the City with a memorandum that identified concerns with Ordinance No. 2016-06, and Ecology provided additional comments to the City in October 2019; and

WHEREAS, the City is required by the SMA to complete a Periodic Review of the SMP every 8 years, and the June 2020 deadline for the City's current Periodic Review process was pushed back to June 30, 2021 by Ecology due to various factors, including the delayed availability of grant funds; and

WHEREAS, the City's work on the SMP aquaculture limited amendment as well as the work on the Periodic Review were delayed due to staffing vacancies and the COVID-19 pandemic; and

WHEREAS, in May 2020, the City Council adopted a revised workplan, and through that workplan the Council approved City staff's recommendation to pursue possible revisions and updates related to the City's SMP aquaculture regulations via the SMP Periodic Review process rather than the aquaculture limited amendment that the City has been unsuccessfully pursuing with Ecology for several years; and

WHEREAS, on August 31, 2020, the Growth Management Hearings Board found in favor of the City and Ecology in the above-referenced Growth Board appeal that was brought in 2014 by the Bainbridge Alliance for Puget Sound, the Association of Bainbridge Communities, and the Coalition to Protect Puget Sound Habitat, and issued an order dismissing and closing the case in the matter of *Bainbridge Alliance et al v. City of Bainbridge Island, State of Washington Department of Ecology, and Pacific Coast Shellfish Growers Association*; and

WHEREAS, as above described, that 2014 Growth Board appeal was a significant factor in the City’s pursuit of the aquaculture limited amendment set forth in Ordinance No. 2016-06, and the dismissal of that litigation is a further basis to withdraw from consideration by Ecology that limited amendment; and

WHEREAS, Ecology has indicated to the City that if the City is proceeding to pursue possible revisions and updates to its SMP aquaculture regulations via the SMP Periodic Review process rather than the SMP aquaculture limited amendment, Ecology would appreciate formal communication from the City Council to state that the limited amendment is being withdrawn by the City from consideration by Ecology as the City works through the Periodic Review process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DO RESOLVE AS FOLLOWS:

Section 1. The City Council is hereby formally communicating to the Washington State Department of Ecology (“Ecology”) and other interested parties that the City is withdrawing the City’s request for Ecology to approve Ordinance No. 2016-06 relating to the Shoreline Master Program (“SMP”) limited amendment regarding aquaculture policies and regulations that the City has been pursuing since 2016 with Ecology.

Section 2. The Director of Planning and Community Development is authorized to continue to proceed accordingly, and the City will continue to work via the SMP Periodic Review process with interested parties who are seeking to pursue topics of interest related to the SMP, including topics related to aquaculture regulations and policies.

PASSED by the City Council this 8th day of September, 2020.

APPROVED by the Mayor this 8th day of September, 2020



Leslie Schneider, Mayor

ATTEST/AUTHENTICATE:


Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:	September 4, 2020
PASSED BY THE CITY COUNCIL:	September 8, 2020
RESOLUTION NO.	2020-16