Bellevue Planning Commission

June 25, 2025

PLANNING COMMISSION STUDY SESSION ITEM

SUBJECT

Study Session on the Critical Areas Ordinance (CAO) Land Use Code Amendments (LUCA).

STAFF CONTACT(S)

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POLICY ISSUES

Every ten years, the Growth Management Act, Chapter 36.70A RCW (GMA), requires local jurisdictions to periodically review and evaluate their adopted critical areas policies and regulations using Best Available Science (BAS) to ensure protection of these areas. State law requires the designation and protection of five types of critical areas: wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas.

Bellevue last conducted a major update to its Critical Areas Ordinance (CAO) in 2006. Since then, limited amendments to the CAO have been adopted to address specific regulatory needs. In 2009, amendments were made to support the BelRed rezone and related LUCA. In 2018, the City updated its Shoreline Master Program, which included removing the Shoreline Jurisdiction Overlay from the Critical Areas Overlay in the Land Use Code (LUC). In 2020, the City adjusted regulations for frequently flooded areas to conform with federal and state standards and adopted the Federal Emergency Management Agency's (FEMA) updated Flood Insurance Rate Maps (FIRMs) and Flood Insurance Study (FIS) to maintain eligibility in the National Flood Insurance Program (NFIP).

The proposed LUCA to update the City's CAO is necessary to maintain compliance with the GMA and meet the state-mandated deadline of December 31, 2025. This update will incorporate BAS to align LUC regulations with current, science-based environmental best practices while balancing the need for enhanced environmental protections with the City's growth priorities outlined in the recently adopted Comprehensive Plan. Additionally, the update will help ensure the City remains eligible for grants, loans, and other state and federal funding for public projects and infrastructure.

The Comprehensive Plan provides policy guidance for developing these updates along with the BAS and public engagement. Relevant Comprehensive Plan policies that have informed the scope of the project include, but are not limited to:

- **Policy CL-52:** Use geotechnical information and an analysis of critical areas functions and values to evaluate the geologic and environmental risks of potential development on geologically hazardous areas and implement appropriate controls on development.
- **Policy CL-54:** Use specific criteria in decisions to exempt specific small, isolated or artificially created steep slopes from critical areas designation.
- **Policy CL-87:** Require and provide incentives for the opening of piped stream segments

during redevelopment where scientific analysis demonstrates that substantial habitat function can be restored, and where the cost of restoration is not disproportionate to the community and environmental benefit.

- **Policy CL-88:** Preserve and enhance native vegetation in Critical Area buffers and integrate suitable native plants in urban landscape development, considering species' climate resilience.
- **Policy CL-100:** Use prescriptive development regulations for critical areas based on the type of critical area and the functions to be protected; and as an alternative to the prescriptive regulations, allow for a site specific or programmatic critical areas study to provide a science-based approach to development that will achieve an equal or better result for the critical area functions.
- **Policy CL-106:** Facilitate the transfer of development potential away from critical areas and the clustering of development on the least sensitive portion of a site.

This project will include changes to the Land Use Code, predominantly to the Critical Areas Overlay, Part 20.25H LUC.

DIRECTION NEEDED FROM THE PLANNING COMMISSION

ACTION	DIRECTION	INFORMATION ONLY
☐	☒	☐

The goal of this study session is to provide Planning Commission information on the Gap Analysis (Attachment A), and key elements currently under consideration for the draft code ahead of the public review draft to be released in late July. Staff will be asking for feedback on the policy change components.

BACKGROUND/ANALYSIS

Gap Analysis

The Gap Analysis utilizes the BAS to review the existing code and identify areas where updates are necessary for consistency with either the BAS or GMA requirements. The analysis also notes areas where updates are suggested to better align with policy at the city level, including policy direction from Council.

Gap analysis findings and recommendations are summarized by topic area below. The gap analysis is included as Attachment A.

May 28th Study Session

At the May 28 Study Session, Planning Commissioners raised questions related to the Reasonable Use Exception and Top-of-Bank definition. More information on these topics is provided below.

Reasonable Use Exception (RUE)

We currently regulate reasonable use exceptions (RUE) based on lot size and types of land use districts. The code currently also references single-family land use districts, which will no longer exist after the adoption of the middle housing LUCA. Many other jurisdictions don't distinguish reasonable use criteria based on lot size or zoning. Generally, the intent of a reasonable use exception is to create a viable development pathway where strict application of the critical areas regulations would deny all

reasonable economic use of a property driven by the site-specific conditions, rather than prescriptive regulations.

The reasonable use exception code is also tied to the density/intensity calculation in LUC 20.25H.045 that limits the density yield of a site that contains or is adjacent to critical areas, which is one of the code components under consideration for removal. This section would also be revised to remove references to that section.

It is possible for an RUE to permit more than one housing unit as a policy choice. Given the scoping priority from Council to look for ways to balance housing and the environment, the city may consider an RUE pathway where multiple units could be built within the same footprint where previously only one could be built. This would only be allowed on the condition that there are still no net impacts to the critical area and the area of disturbance is the same regardless of the number of proposed units. However, the city may also choose to limit RUE based on units as well.

Top-of-Bank versus ordinary high-water mark (OHWM)

At the May 28 study session, additional clarification was requested regarding the definitions of "top-of-bank" and "ordinary high water mark" (OHWM), and how they differ.

Top-of-bank is defined in the LUC based on the point at which the boundary of an active floodplain of a stream reaches a certain pitch for a certain distance either at a break in the slope of the land or the slope of the land beyond the edge of the active floodplain of a stream. It is determined based on geomorphic features rather than indicators of water presence or movement.

The OHWM is a field-determined boundary used to identify the edge of a stream, river, or other waterbody. It is typically established by a qualified professional based on observable physical characteristics such as changes in soil, vegetation, and marks on the bank that indicate regular water flow. While the Washington Department of Ecology and the U.S. Army Corps of Engineers apply slightly different criteria, the core concept is consistent: the OHWM represents the line that reflects the ordinary extent of surface water.

Using top-of-bank provides additional protections to streams, however, this non-standard approach is less familiar to professionals. Using the OHWM, by contrast, is the current best practice applied across jurisdictions and supported by regional training and state and federal guidance.

The Washington Department of Fish and Wildlife (WDFW) also references riparian management zones (RMZ), which is defined as areas adjacent to rivers and streams that have the potential to provide full functionality based on their site potential tree height framework (SPTH)[1]. In areas where RMZs cannot clearly be established, WDFW defaults to using OHWM.

Staff will move forward with applying the OHWM as the standard, per previous Planning Commission direction.

Key Components of Draft Code

Critical Area Buffers

Designation of critical areas and assignment of their buffers based on the delineation and designation needs to be updated to align with BAS. One area where the city has a policy choice to make is reviewing

[1] Site potential tree height is defined as "…the average maximum height of the tallest dominant 4 trees (200 years or more) for a given site class" (Rentz, et al.2020).

the guidance from WDFW on SPTH. WDFW's guidance methodology differs from the historical practice of typing streams based on fish presence, and instead applies stream buffers based on SPTH. These methods may not be practical in developed and more urbanized areas. An alternate WDFW-recommended approach is to utilize OHWM and associated RMZs to define stream buffers and focus on restoration of degraded riparian areas to the maximum extent feasible. Per the gap analysis, staff is also considering changes to the performance standards and structure setbacks for piped stream segments for consistency with incentives to daylight streams.

The code section regulating wetlands also needs to be updated to align with Ecology guidance, including how to treat smaller, lower-quality wetlands, updating habitat score, and including a habitat corridor provision. Habitat corridors provide linkages between open space areas to allow for movement within a developed area for wildlife. The Coal Creek corridor, for example, is identified as part of King County's wildlife habitat network. Another change based on Ecology guidance is that wetland buffers are based on the presumption of a buffer providing adequate functionality, degraded buffers shall either have larger buffer widths or mitigation will need to be provided.

Steep Slopes

The recommendation in the gap analysis is to provide updated language that permits additional construction methods on human-made slopes that meet certain requirements. There are additional code components for geologically hazardous areas that will also help to ensure safety and stability of slopes. These include adding language to specifically address the potential for an erosion hazard, additional standards to clarify when monitoring is required, potentially adding a section specific to seismic hazards, as well as establishing a minimum factor of safety to ensure stability of a slope as part of the approval of modification criteria.

Development Factor and Residential Density

The current code limits the number of dwelling units per acre and the maximum floor area ratio (FAR) for office space for a site that is located in the Critical Areas Overlay District. In the BelRed and East Main land use districts, the code restricts total floor area (whether residential or office) when critical areas are present.

This "development density/intensity" calculation for a site within the Critical Areas Overlay District is designed to determine how many dwelling units can be built while accounting for both developable land and critical areas. The maximum dwelling unit potential is based on adding the dwelling units per acre permitted on the buildable area, plus the potential dwelling units per acre on the area of the site covered by critical areas and associated buffers with a percentage removed. This reduction is known as the development factor, and is calculated based on the ratio of buildable area to critical area on a site.

While this method provides a structured approach to balancing development and environmental protection, it can be somewhat confusing and complex during the development review process. Additionally, the number of units or square footage on a site does not affect how critical areas are delineated or how buffers and setbacks are applied. Staff is working with the consultant team to determine if reducing development yield on a site is necessary to ensure protection of a given critical area. This includes exploring whether prioritizing the clear and consistent delineation of critical area and buffer boundaries, rather than varying protections based on development scale or density, could offer a more effective and transparent way to protect environmental functions and values. Such an approach may help to preserve development potential while maintaining critical areas protection and supporting a more balanced model of growth and conservation, particularly as this standard applies in our growth corridor (i.e., BelRed, East Main, Eastgate, etc.).

Critical Aquifer Recharge Areas (CARA)
Critical Aquifer Recharge Areas (CARAs) are designated areas with a critical effect on aquifers to recharge. These areas are important to protect because they play a key role in maintaining the quality and quantity of groundwater, which is often used for drinking water and other essential needs.

The LUC does not currently have a section addressing CARAs. Staff is reviewing Ecology's recommended CARA code content, example language, and best practices to determine what will work best for the city. King County also has its own CARA regulations that can be referenced as well.

CARAs are typically categorized based on how susceptible they may be to groundwater contamination and relative proximity to a sole source aquifer or wellhead protection area. Bellevue contains a number of wellhead protection areas and adding a new section to regulate them will help protect the city's groundwater resources.

Public Engagement
For additional detail, see the public engagement plan provided as an attachment to the May 28th meeting materials.

1. Process IV Requirements. Process consistent with Chapter 20.35 LUC procedural requirements to provide opportunities for public comment, including:
   - Notice of Application and Notice of Public Hearing
   - Public hearing on the proposed LUCA with Planning Commission

2. Online Presence. A dedicated city webpage will provide project information, FAQs, the latest LUCA drafts, points of contact for questions, and instructions for submitting comments.

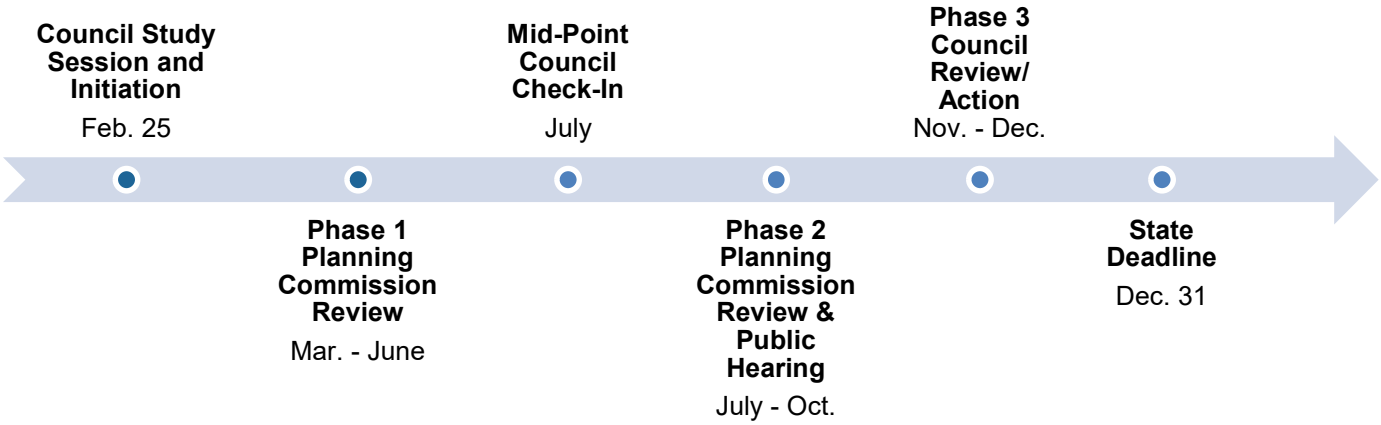
3. Direct Engagement and Feedback. Staff will facilitate ongoing discussions with environmental advocates, residents, the development community (including the Bellevue Development Committee), and King County and neighboring cities to gather diverse perspectives.

4. Community Workshops. Two workshops will be held to discuss BAS updates and regulatory implications, as well as to gather feedback on proposed changes. These workshops will engage residents, neighborhood leaders, various neighborhood associations, environmental advocates, and building industry professionals.

   Summer engagement event dates are below:
   - June 16th at City Hall, room 1E-108, 6:30-7:45pm
   - July 7th virtual, 12-1pm

5. Virtual Public Information Session. An interactive online event where the public can review and provide feedback on the draft CAO in a convenient, accessible format.

LUCA Schedule



ATTACHMENT(S)

A. Gap Analysis