

August 1, 2016

## **CITY COUNCIL AGENDA MEMORANDUM**

### **SUBJECT**

Critical Areas Overlay Update for consistency with the Growth Management Act requirement of jurisdictions planning under RCW 36.70A.040.

### **FISCAL IMPACT**

No fiscal impact is expected. The application of any amended version of the Critical Areas Overlay part of the Land Use Code will be administered by the land use staff during review of permit applications.

### **STAFF CONTACTS**

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### **POLICY CONSIDERATION**

The Growth Management Act (GMA) states, “...*cities and counties shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter....*” (RCW 36.70A.130). Last year, Bellevue adopted the update to the City’s Comprehensive Plan in compliance with these requirements. On May 2nd, the Council adopted Resolution No. 9094 finding that Bellevue’s development regulations complied with the requirements of GMA, with the exception of certain critical areas regulations. Refer to Attachment A for Resolution No. 9094.

The purpose of this meeting is to document City progress on the required update to the Critical Areas Overlay (CAO), to affirm the narrow scope of the mandated update, and to identify the City Council as the appropriate body to hold the required public hearing.

### **BACKGROUND**

In order to be eligible for certain types of state funding (e.g. transportation, utilities and parks) cities and counties planning under the GMA must be in compliance with the requirements of the statute. King County and all of the cities within the county were required to review and, if needed, revise their Comprehensive Plans and development regulations by June of 2015. City Council adopted the update of Bellevue’s Comprehensive Plan on August 3, 2015. The Washington Department of Commerce indicated the City still needed to finalize the review and update of development regulations and critical area regulations.

On April 18, the staff from the Planning and Community Development (PCD) department presented its review and findings to document GMA compliance of the development regulations. A copy of these findings are included with these materials for Council reference as Attachment B. Following the required public hearing, the City Council adopted Resolution No. 9094 to affirm the finding that Bellevue’s development regulations comply with the requirements of GMA. Refer to Attachment A.

The finding of compliance applied to all development regulations except for critical areas (which was on a separate compliance timeline). Jurisdictions were granted an extension to June 2016 to complete the review and update of critical area regulations once their comprehensive plans were updated. The direction requested this evening is the first step in the Council adoption process to update the Critical Areas Overlay (CAO) that was described to Council as necessary on April 18<sup>th</sup> in order to ensure that the City's development regulations are consistent with GMA.

Following the GMA compliance review by PCD and Council, immediate steps were taken by DSD to secure consultant assistance to update the Best Available Science (BAS) and existing conditions technical report that was originally prepared in support of the CAO adoption in 2006. Consultant services were also secured to prepare a gap analysis to identify where updates were needed in the development regulations to ensure their consistency with GMA. This technical work will be finalized in early August.

In order to preserve City eligibility for certain types of state funding, staff wishes to confirm next steps with the City Council for processing the code amendments that were identified as necessary to bring the critical areas overlay into compliance with the requirements of GMA.

Required steps needed to comply with state law include:

1. Code Drafting
2. Outreach regarding the Code Amendments and the supporting Technical Work
3. Issuance of a staff recommendation on amendments needed to comply with GMA
4. Public hearing
5. Council adoption of the required code amendments; and,
6. East Bellevue Community Council Public Hearing.

In order to ensure that grant funding is not withheld for GMA non-compliance, staff is recommending that:

1. The scope of the CAO amendment is narrowly tailored to address only those areas that are required to be updated in order to comply with the state law; and
2. The Council retains the responsibility for holding the required public hearing, rather than forwarding this update to the Planning Commission for review.

The purpose of this Critical Areas Overlay update to the development regulations is solely to address the compliance requirements with the GMA in order to be eligible for state funding for transportation, utilities and parks projects. There are other code amendment work program items that have been docketed by the City Council that could result in changes to the CAO, but that have not yet been initiated because available staff resources are currently dedicated to completion of Eastgate, Downtown Livability, and Low Impact Development Principles projects.

In the past, discretionary amendments to the CAO have been the topic of broad stakeholder interest, and have been extensively debated over lengthy periods of time. One example of a currently docketed code amendment project is the review of procedural and substantive provisions of the CAO that was recommended by the Planning Commission for consideration once the shoreline regulations were adopted by the Department of Ecology. Because discretionary amendments are not required for compliance or state funding eligibility, they are not recommended for review or public hearing as part

of the currently mandated update. The CAO update process recommended to the City Council would be narrowly tailored to address only those areas where 1) the update to the Comprehensive Plan created the need to update development regulations for consistency, 2) where agency guidance had changed for protection of a critical area, or 3) where changes to existing conditions warranted a change to the CAO.

The staff are also recommending that the City Council hold the public hearing that is required in order to amend the Land Use Code, and make a finding that this process path is necessary to accomplish the mandated CAO update as quickly as possible to maintain grant eligibility. The Planning Commission has been working tirelessly to formulate recommendations to the City Council on the Eastgate code amendment and legislative rezone, the Downtown Livability code amendment and legislative rezone, the amendments necessary to adopt Low Impact Development principles in compliance with the state stormwater permit, and the 2016 Comprehensive Plan Amendments. These projects are all scheduled for completion by year-end and will take all of the Planning Commission's availability meeting time to complete. In addition, the amendments needed to update the CAO are required to comply with GMA based on a required Best Available Science and a Gap Analysis. As a result, the policy choices to comply with the GMA mandate and preserve grant funding eligibility are limited.

The following schedule is suggested to accomplish an aggressive CAO Update.

August	Code Drafting
August - September	Outreach
September	Staff Recommendation
September	Presentation to Council in Study Session
October	Public Hearing on Code Amendments and GMA Compliance
October	Adoption of the Required Code Amendments

### **OPTIONS**

1. Following the staff presentation, Council direction is requested to:
  - a. Draft narrowly tailored code amendments to the Critical Areas Overlay solely to maintain compliance of the City's development requirements with GMA
  - b. Find it is necessary for the City Council to hold the public hearing in order to accomplish the mandated CAO update as quickly as possible to maintain grant eligibility
2. Provide alternative direction to staff the scope of the CAO Update or the appropriate body to hold the required public hearing

### **RECOMMENDATION**

Option 1.

### **MOTION**

Move to direct staff to draft a narrowly tailored code amendment to the Critical Areas Overlay to maintain compliance of the City's development requirements with GMA, and to advance the code package to the City Council for public hearing because this process path is necessary in order to accomplish the mandated CAO update as quickly as possible to maintain grant eligibility.

## **ATTACHMENTS**

- A. Resolution No. 9094
- B. PCD analysis and findings for compliance with the Growth Management Act from review of development regulations