

## **CITY COUNCIL STUDY SESSION ITEM**

### **SUBJECT**

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

### **STAFF CONTACTS**

Mike Brennan, Director 452-4113  
Carol Helland, Land Use Director, 452-2724  
*Development Services Department*

### **POLICY ISSUES**

The Growth Management Act 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.

On August 1, staff sought direction from the City Council on the scope of the critical areas update amendment and whether the Council should hold the public hearing rather than forwarding it to the Planning Commission. Following discussion, staff was directed “to conduct a narrowly tailored code amendment to the Critical Areas Ordinance (CAO), aimed at maintaining the City’s development requirements under the Growth Management Act, and to advance the code package to the City Council for public hearing. This process path is necessary in order to accomplish the State-mandated CAO update as quickly as possible to maintain grant eligibility.”

The purpose of this study session is to introduce the Best Available Science (BAS) and Existing Conditions report, and the Gap Analysis that identifies areas where amendments are necessary to the Land Use Code (LUC) to bring the CAO into compliance with state law. These documents are included in Attachments A and B respectively. A narrowly tailored code amendment has also been prepared for Council consideration. Attachment C details the code amendments to the City’s Critical Areas Overlay, found in Part 20.25H of the Land Use Code, that are needed to address the gaps identified in Attachment B.

Several amendments proposed as part of this limited CAO update affect the same sections of Part 20.25H as the Council’s prior Shoreline Master Program Conformance Amendments, adopted by the Council with Resolution No. 8922. Code amendments adopted by Resolution No. 8922 are currently with the Department of Ecology as they perform the review and approval required under the Shoreline Management Act.

In order to avoid confusion or inadvertent inconsistencies between the amendments to the Critical Areas Overlay proposed now, and the amendments that were approved by the Council as part of the SMP Update, we have added the limited CAO code amendments to the amendments adopted by Resolution No. 8922. This approach allows for review by Council and stakeholders in a single

document. We are working with the state agencies (Departments of Ecology and Commerce) to determine how those agencies will approach processing of these two updates (SMP, currently under review by Ecology; limited Critical Areas Overlay Update requiring review by Commerce). We will update the Council and the public on the results of our discussions with these state agencies when that information is available.

### **DIRECTION NEEDED FROM COUNCIL**

- Action
- Discussion
- Information

The action being sought from Council at tonight's meeting is to set a date for public hearing on the limited Critical Areas Overlay update amendments for October 3 following discussion of the technical information provided.

Staff and consultants will be present to answer any questions the Council may have regarding the Best Available Science and Existing Conditions Report (Attachment A), and the Gap Analysis (Attachment B). Together, these documents provide the technical analysis that supports the proposed code amendments included in Attachment C.

### **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. 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. The finding of compliance applied to all development regulations except for critical areas (which was on a separate compliance timeline).

The direction provided by the City Council on August 1 initiated the CAO code amendment and made a finding of necessity that the City Council retain responsibility for conducting the required public hearing on the code amendment in order to expedite its completion. The direction requested this evening is the second step in the code adoption process. Based on review of the Best Available Science and Existing Conditions Report and Gap Analysis, staff has proposed only those code amendments necessary to ensure that the City's Land Use Code is consistent with GMA. Staff is asking that the City Council provide direction to schedule the required public hearing on the proposed code amendments included in Attachment C.

The proposed hearing schedule and adoption of necessary code amendments is important in order to preserve City eligibility for certain types of state funding. For example, the state Transportation Improvement Board (TIB) considers GMA compliance as part of an eligibility review of agencies who

have submitted applications to their grant programs, including the Urban Arterial Program (UAP). This August, the Transportation Department submitted two separate applications to the TIB UAP grant program requesting in excess of \$10 million. The applications include \$6.752 million for the 124<sup>th</sup> Avenue NE – Spring Blvd to NE 18<sup>th</sup> Street Project (CIP Plan No. PW-R-166) and \$3.5 million for the Newport Way – Somerset Blvd to 150<sup>th</sup> Ave SE Project (CIP Plan No. PW-R-185). TIB staff have indicated their GMA compliance eligibility check will occur by “mid-October.”

The purpose of this Critical Areas Overlay update is solely to address the compliance requirements with the GMA in order to be eligible for state funding for transportation, utilities and parks projects. Amendments proposed by staff were recommended by the consultant as the minimum necessary to ensure that state compliance is achieved. Additional discretionary amendments were recommended by the consultants, but staff is proposing that these be docketed for consideration during a future CAO review. A broader review of the CAO has been docketed as a work program item, but has not yet been initiated because available staff resources are dedicated to completion of other high-priority projects, including Eastgate, Downtown Livability, and the Low Impact Development Principles projects.

The Gap Analysis included in Attachment B provides the best summary of the mandated code amendments that are presented in Attachment C. Staff will use the Gap Analysis to walk through the proposed code amendments during the September 12 Council meeting. Mandated code amendments recommended by the consultant are identified in the Gap Analysis (Attachment B) with action verbs such as “clarify,” “update,” or “revise.” Consultant recommendations made for City “consideration” indicate amendments that are discretionary in nature. The discretionary recommendations were not included in the narrowly tailored CAO update amendments that are proposed for Council consideration. Staff is recommending that these discretionary amendments be docketed for consideration during a future CAO review.

The following chart summarizes staff progress toward completing the steps necessary for processing code amendments that were identified during the August 1 Study Session.

✓ August	Code Drafting – Proposed Ordinances in Attachment C
August – September	Outreach – Ongoing <ul style="list-style-type: none"> <li>✓ BAS and Existing Conditions Report posted to City Website</li> <li>✓ Gap Analysis posted to City Website</li> <li>✓ Notice in Blue Bulletin provided Sept 1</li> <li>✓ Proposed Amendments posted to City Website Sept 9</li> <li>✓ Notice of intention to amend sent to Commerce Sept 9</li> </ul>
✓ September 12	Presentation to Council in Study Session
September 15	Notice of Public Hearing on CAO update, and release of the staff report, if directed by Council during September 12 study session
October 3	Public Hearing on the Proposed CAO Update, and final action on the code amendments.
October 17 (tentative)	If proposed code amendments are not adopted on October 3

## **ALTERNATIVES**

1. Following the staff presentation, Council direction is requested to schedule the public hearing on CAO Update amendments and GMA compliance for October 3.
2. Provide alternative direction to staff.

## **RECOMMENDATION**

Staff recommends Alternative 1.

## **MOTION**

Move to direct staff to schedule a public hearing for October 3 on CAO update amendments to ensure compliance with state law and consistency between the CAO and SMP updates for transmittal to Commerce and the Department of Ecology.

## **ATTACHMENTS**

- A. Best Available Science and Existing Conditions Report
- B. Gap Analysis
- C. Proposed language to amend the SMP Conformance Amendments to include narrowly tailored CAO update amendments to demonstrate GMA compliance with state law.