

City of Bellevue



STAFF REPORT

DATE: September 22, 2016

TO: Mayor Stokes and Members of the City Council

FROM: Carol Helland, Land Use Division Director 452-2724
Development Services Department

SUBJECT: Public Hearing on Critical Areas Overlay Update for consistency with the Growth Management Act requirement of jurisdictions planning under RCW 36.70A.040 File No. 16-141195-AD

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 2, 2016, 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 land use code amendment (LUCA) 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."

On September 12, 2016, the Best Available Science (BAS) and Existing Conditions report, and the Gap Analysis were introduced to the City Council. These documents are included in Attachment A-1 and A-2 respectively. These documents, together with an addendum to the Gap Analysis, identify areas where amendments are necessary to the Land Use Code (LUC) to bring the CAO into compliance with state law. The narrowly tailored code amendment requested by the City Council has also been included for consideration during the required public hearing that has been scheduled for October 10, 2016. Attachment A-3 details the code amendments to the City's CAO, found in Part 20.25H of the Land Use Code, which are needed to address the gaps identified in Attachment A-2.

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 (SMP) 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 CAO Update proposed now, and the amendments that were previously approved by the Council as part of the SMP Update, staff has added the limited CAO code amendments to the amendments previously adopted by Resolution No. 8922. This approach allows for review by Council and stakeholders in a single document. In the time since this approach was described to the City Council on September 12th, we have received commitments from the Departments of Ecology and Commerce that they will accept the proposed approach to combine the code amendment document to meet the update requirements of both the Shoreline Management Act (SMA) and the Growth Management Act.

Following completion of the code amendment process, including a public hearing and adoption of a final resolution by the City Council, the documents will be forwarded to the appropriate state agencies to complete the updates required under SMA and GMA. The code amendment will be transmitted to the Department of Ecology for inclusion in its review and for the public to comment on as part of the City's SMP Update. The code amendment will also be forwarded to the Washington State Department of Commerce to demonstrate compliance with the GMA to preserve state grant funding and loan eligibility. The CAO Update will be effective after the SMP Update is approved by the Department of Ecology. This approach is intended to ensure consistency between the SMP and CAO Updates (both of which require state approval), and to ensure that the updates are adopted contemporaneously, and environmental protections are preserved as envisioned by the Comprehensive Plan.

A Public Hearing on the Critical Areas Overlay Update (included as Attachment A-3) is scheduled during the City Council extended study session on October 10, 2016. After deliberation and consideration of public comment received at the October 10 Public Hearing, the Council will take final action on the LUCA on October 10th or at a future Council meeting.

I. 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 that the city still needed to finalize the review and update of development regulations and critical area regulations.

On April 18, 2016, 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).

Council Direction on the CAO Update

On August 1, 2016, the City Council initiated the CAO code amendment and found that it was necessary for the Council to retain the responsibility for the public hearing to expedite the amendment process to preserve its eligibility for state grants and loans. On September 12, the City Council was introduced to the Best Available Science and Existing Conditions Report and Gap Analysis. These documents together provided the information necessary for staff, with consultant assistance, to develop the narrowly tailored code amendment requested by the City Council to ensure that the City's Land Use Code is consistent with GMA.

During the September 12 Study Session, the City Council also directed staff to prepare an explanatory document summarizing how the proposed code amendments relate to the existing regulations and how property owners will be affected. Enhanced noticing was also requested for property owners that would be affected by the proposed LUCA.

1. Impact of the LUCA on Affected Property Owners

A total of 12 code changes are being proposed by staff based upon the Gap Analysis that was prepared by the City's consultant. Nine of the proposed changes are characterized as non-substantive because they would not change the way in which the CAO is administered, or the scope of work or time associated with obtaining a permit. The three substantive changes relate to:

- The classification of wetlands, and the assignment of wetland buffers applicable to heritage wetlands and bogs;
- The public safety need to undertake site specific geotechnical studies to identify toe-of-slope setbacks from landslide hazard areas based on lessons learned from the Oso slide; and
- The location of trails in wetland and stream buffers located on single family lots.

The memorandum prepared by The Watershed Company, and included with this staff report as Attachment A-4, describes the basis for each substantive change, and the effect of the proposed change on property owners.

2. Enhanced Notice to Affected Property Owners

The City Council also requested staff to provide enhanced notification of the October 10 public hearing. The staff complied with the legal notification requirements for city-wide LUCAs pursuant to the Bellevue Land Use Code and GMA. Legal notification includes publication in the City's Weekly Permit Bulletin, distribution to individuals who have requested subscriptions to the Weekly Permit Bulletin, and notification to individuals who commented on the proposal. The subscription list contains members of the Community Council, and representatives from each neighborhood association, community club, or other citizens' group who has requested notice of land use actions. Notification of the proposed LUCA was also placed in the Seattle Times.

Enhanced notification was also provided in response to the City Council request through the following additional measures:

- Mailed notice was provided to owners with property touched by or within 150 feet of a state or federally mapped wetland or identified stream.
- A City Website page was developed for the code amendment component of the Comprehensive Plan Update. This website includes the technical documents prepared for the original CAO adoption, technical updates prepared to support the current update, the narrowly tailored code amendment prepared in response to Council direction, and the explanatory document summarizing how the proposed changes relate to the existing regulation and how property owners can expect to be affected by the proposed code change.
- The Shoreline Master Program Update page was also updated with links to the CAO Update so that information would be pushed out to individuals who had previously expressed an interest in the SMP Update and subscribed to the website alerts on that topic.

Why is the CAO Update Important?

In August of 2015, the City Council adopted its updated Comprehensive Plan following a multi-year process that included public events and open houses, over 70 meetings of different boards and commissions; an online strategy that included project websites, social media and an online open house; meetings with neighborhoods and stakeholders; a series of press releases and op-eds; and a speaker series. The updated "Comprehensive Plan sets out the community's vision for the future, lays out a groundwork of planning policies to guide city actions, and provides a framework so that

city departments and community organizations work together toward common goals.”
Comprehensive Plan General Elements – Volume 1. Introduction and Vision, p. 2.

“Bellevue’s Comprehensive Plan is the city’s foundational policy document that guides growth and development for the next twenty years. Today, Bellevue is known as a community with beautiful natural areas, a vibrant downtown and strong economy, some of the nation’s best schools, and healthy neighborhoods. Bellevue’s success today isn’t a fluke. It stems from decades of community work, foresight, and planning.”

Comprehensive Plan General Elements – Volume 1. Introduction and Vision, p. 1.

Among other things, the Environmental Element of the Comprehensive Plan was updated. The plan’s “elements” or chapters provide the city’s long-range policy direction for specific topics. The LUCA that is currently proposed by staff is intended to ensure that regulations adopted to guide development are consistent with the Comprehensive Plan, and work effectively to enhance those qualities that make Bellevue a special place. Having regulations consistent with the Comprehensive Plan helps the community achieve its potential.

The update to the Critical Area Overlay is also important in order to remain in compliance with state law, which preserves 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 124th Avenue NE – Spring Blvd to NE 18th Street Project (CIP Plan No. PW-R-166) and \$3.5 million for the Newport Way – Somerset Blvd to 150th 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 ensure consistency between the Comprehensive Plan and the City’s development regulations, and 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. Discretionary amendments recommended by the consultants have been docketed for consideration during a future CAO review. The discretionary items are not being considered as part of this current LUCA, because of the expedited timeline associated required to maintain grant eligibility, and because staff resources are dedicated to completion of other high-priority projects, including Eastgate, Downtown Livability, and the Low Impact Development Principles projects.

The LUCA included in Attachment A-3 is intended to provide Council with the narrowly tailored code amendment that they requested. The Gap Analysis included in Attachment A-2 provides the best roadmap to the code amendments that were identified by the consultant as mandatory to comply with GMA. Mandated code amendments

recommended by the consultant are identified in the Gap Analysis (Attachment A-2) 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 and included in Attachment A-3.

II. REVIEW PROCESS

When the City Council initiated this LUCA at its Council meeting on August 1, 2016, the Council also indicated that the required public hearing associated with amendments be held by the City Council in lieu of forwarding to the Planning Commission in order to expedite the amendment process. The LUCA was considered by the Council during the Council’s September 12 Study Session, and the Public Hearing before the City Council is scheduled for October 10. These steps satisfy the requirements for adoption of the proposed LUCA by the City Council, and final action can be taken at any time following the public hearing at the October 10 Extended Study Session.

Following completion of the code amendment process, including a public hearing and adoption of a final resolution by the City Council, the documents will be forwarded to the appropriate state agencies to complete the updates required under SMA and GMA. The code amendment will be transmitted to the Department of Ecology for inclusion in its review and for the public to comment on as part of the SMP Update. The code amendment will also be forwarded to the Washington State Department of Commerce to demonstrate compliance with the GMA to preserve funding eligibility. The CAO Update will be effective after the SMP Update is approved by the Department of Ecology.

III. PUBLIC NOTICE

Notice of the LUCA application was published in the Weekly Permit Bulletin on September 1, 2016. Notice of the Public Hearing and availability of this staff report was published on September 22, 2016.

Critical Areas Ordinances are not subject to approval/disapproval jurisdiction of the East Bellevue Community Council (EBCC). However, they will be briefed regarding the content of the proposed amendment during the October 4 EBCC meeting.

Pursuant to the Washington State Growth Management Act, state agencies must be given 60 days to review and comment on proposed amendments to the Land Use Code. Given the compressed timeframe needed for approval of these amendments to comply with GMA, a copy of the proposed amendment was provided to state agencies, together with a request for expedited review, on September 14, 2016. A copy of the required transmittal to the Washington State Department of Commerce is available for review in the code amendment file.

The balance of this Staff Report analyzes the decision criteria in the Land Use Code that must be met to support adoption of a Land Use Code Amendment.

IV. DECISION CRITERIA

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the Land Use Code. Those criteria, and the relationship of the proposal to them, are discussed below:

A. The amendment is consistent with the Comprehensive Plan; and

Finding: The Environmental Element of the Comprehensive Plan was amended as a component of the City's Comprehensive Plan Update and adopted by the City Council on August 3, 2015. The Gap Analysis included as Attachment A-2 to this staff report describes the code amendments necessary to ensure consistency between the Critical Areas Overlay and the updated Comprehensive Plan. The code amendments included in Attachment A-3 will ensure that the Critical Areas Overlay is consistent with the newly updated Environmental Element to the Comprehensive Plan.

B. The amendment enhances the public health, safety or welfare; and

Finding: Consistency between the updated Environmental Element of the Comprehensive Plan and the Critical Areas Overlay will ensure that natural resources in Bellevue are protected. Bellevue's updated Environmental Element of the Comprehensive Plan, and the recommended amendments to ensure consistency between the plan and the regulations, will enhance public health, safety and welfare by minimizing the susceptibility of environmentally sensitive areas to damage. State law requires cities to plan for the protection of environmentally critical areas, such as wetlands and geologically hazardous areas. This consistency amendment will ensure that future development is appropriately regulated to preserve the environmental benefits of critical areas, as well as making sure that development does not occur in areas where environmental hazards exist as envisioned in the updated Comprehensive Plan.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Finding: The amendment is not contrary to the interests of citizens and property owners as it will ensure that the Critical Areas Overlay is consistent with state law mandates included in the Growth Management Act, and that the City's eligibility for grant funding is maintained. The proposed code amendment is the minimum necessary to meet the state law requirement, and also ensures that property owners can rely on buffer modifications memorialized in native growth protection easements and critical areas land use permits approved by the City.

V. STATE ENVIRONMENTAL POLICY ACT

Per Revised Code of Washington paragraph 43.21C.450(1), this LUCA is a nonproject action that is categorically exempt from the requirements of the State Environmental Policy Act (SEPA). Adoption of the proposed LUCA is required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, and the City's Comprehensive Plan Update was previously subjected to environmental review as documented in Resolution No. 9094 adopted by the City Council on May 2, 2016.

VI. RECOMMENDATION

The narrowly tailored LUCA included with this staff report as Attachment A-3 is consistent with the decision criteria required for adoption of a Land Use Code Amendment. The staff recommends that the Land Use Code Amendment be adopted to ensure that the Critical Areas Overlay is consistent with the Comprehensive Plan and the consistency requirements under the Growth Management Act that apply to jurisdictions planning under RCW 36.70A.040.

ATTACHMENTS

- A-1. Best Available Science and Existing Conditions Update
- A-2. Gap Analysis and Addendum
- A-3. Recommended Narrowly Tailored Code Amendment
- A-4. Effects of Proposed CAO Revisions. The Watershed Company. September 21, 2016.