

October 10, 2016

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Public Hearing on the Critical Areas Overlay Update needed for consistency with the Growth Management Act (GMA) 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 CONTACT(S)

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Development Services Department

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 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, Council directed staff "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 recommended "narrowly tailored" land use code amendment (LUCA) requested by the City Council is included with this memorandum as Attachment A-3. A description of how the amendment conforms with the Bellevue Comprehensive Plan is provided in the Staff Report that is included with this memorandum as Attachment A (refer to page 7), which is supported by the Gap Analysis that is included as Attachment A-2.

The City Council scheduled a public hearing on the CAO Update LUCA for October 10, 2016. Following the public hearing, staff will be asking the City Council to provide direction on the contents of the code amendment, so that it can be prepared for adoption at a future meeting.

BACKGROUND

As noted above, the GMA requires that jurisdictions ensure that their development regulations are consistent with their comprehensive plans, and that critical areas regulations are updated on an eight year cycle to ensure that changes in scientific understanding are taken into consideration. Bellevue

updated its Comprehensive Plan, and notified the Washington Department of Commerce on May 3, 2016, that our development regulations were consistent with the Comprehensive Plan and GMA, with the exception of the Critical Areas Overlay. Technical work on the necessary to update the CAO portion of the Land Use Code began in April 2016.

Code amendments are Process IV Legislative Actions of the City Council. Generally these proposals go to the Planning Commission to hold a public hearing, but in this case the City Council found it necessary to hold the public hearing in light of the current Planning Commission work load, and in order to accomplish the state mandated update quickly to maintain grant and loan eligibility. As is required by the Land Use Code procedural provisions, a staff report was prepared to describe the recommended code amendment and provide information necessary to support the public hearing that was scheduled by the City Council for October 10, 2016.

The CAO Update Staff Report is included with this memorandum as Attachment A, and it describes the history associated with the update work, and the process used to update best available science and identify regulatory gaps in the existing CAO. To avoid unnecessary duplication, background information contained within the Staff Report in Attachment A is not repeated here. This memorandum focuses on feedback received from the public and the Department of Ecology since the staff report was issued on September 22, 2016.

Feedback received since the Staff Report was issued

On September 28, the Council and City staff received an email communication from the President of the Washington Sensible Shoreline Association (WSSA). A copy of the email transmittal and letter is included with this memorandum as Attachment B. The WSSA letter describes how the Association believes the new 2014 wetland rating system used by state and federal agencies will change “lake-fringe wetland” buffer widths applicable on shoreline properties.

In response to the WSSA letter, staff requested The Watershed Company to evaluate several hypothetical lake fringe scenarios for Lake Washington and Sammamish under both the 2004 Rating System and the 2014 Rating System. Under the 2004 rating system, low quality lake-fringe wetlands would generally be categorized as Category IV wetlands. Although the 2014 rating system allows for lake-fringe wetlands to be rated as Category IV, it would be very unlikely that even the lowest quality wetland on Lake Washington and Lake Sammamish would be rated as Category IV under the new system.

The Association is correct that lake-fringe wetland buffer widths in Bellevue could change as a result of the “bump up” in category from Category IV to Category III when the 2014 rating system is applied. However, it would be extremely unlikely that a lake-fringe wetland would have high habitat scores requiring a 225-foot buffer. In most cases, the habitat score for a small lake-fringe wetland would range between 3-5, and would require a buffer of 60 or 110 feet. The recommended CAO Update LUCA included in Attachment A-3 currently allows applicants to rely on buffer widths previously established by Native Growth Protection Easements/Areas or approved Critical Area Land Use Permits. However, shoreline properties that have not been developed using these tools, could be subjected to wider buffer widths if steps are not taken to ameliorate the impact of the required rating system change.

Given that we have been advised by the Department of Ecology that it was not their intention for buffer widths to change as a result of cities adopting the 2014 rating system, staff is recommending that the

City Council consider an additional amendment to the CAO Update LUCA presented in Attachment A-3 to ameliorate the effects of this unintended consequence of the rating system change. The additional amendment would require inclusion of the following language to LUC section 20.25H.095 as follows:

20.25H.095 Designation of critical area and buffers.

€D. Designation of Critical Area Buffer

1. Wetland Critical Area Buffer.

c. Shoreline Lake-Fringe Wetlands: Category III lake-fringe wetlands less than 2,500 square feet with habitat scores of five or less that are adjacent to a shoreline are exempt from a wetland buffer. Shoreline vegetation conservation standards per LUC 20.25E apply.

Ð E. Structure Setbacks.

3. Shoreline Lake-Fringe Wetlands: Category III lake-fringe wetlands less than 2,500 square feet with habitat scores of five or less that are adjacent to a shoreline are exempt from a wetland structure setback. Shoreline structure setback standards per LUC 20.25E apply.

The above-described change would ensure that lake-fringe wetlands less than 2,500 square feet in size would continue to have no required wetland buffer, even if a rating bump up from Category IV to Category III results based on application of the 2014 rating system. A draft Resolution and recommended CAO Update LUCA, with revisions to LUC section 20.25H.095 to ameliorate the effects of the rating change on shoreline property owners with lake-fringe wetlands, has been included with this memorandum as Attachment C.

Since the Staff Report was issued on September 22, staff has also continued to be in contact with the Department of Ecology regarding the status of its review of the Shoreline Master Program (SMP) Update. As described in the Staff Report, both Departments of Ecology and Commerce have agreed to coordinate their review of the City's consolidated code amendment document prepared to meet the update requirements of both the Shoreline Management and Growth Management Acts. During this time, Ecology has finalized its schedule of next steps in the SMP Update review and approval process. Because this was of interest to WSSA representatives who submitted comments during the September 12 Study Session on the CAO Update LUCA topic, the Ecology schedule is briefly summarized below.

Department of Ecology SMP Update Public Review Timeline

September 27	Notice Opening Ecology Comment Period and Public Hearing
September 30	Comment Period Open
October 18	Open House and Public Hearing and Bellevue City Hall
October 31	Comment Period Closes

The public hearing and comment period described above will be followed by Ecology's summary of public comments and City response to Ecology's comment summary. Once this task is complete, Ecology will issue required and recommended changes to our SMP. The final step will include City

negotiation with Ecology regarding how to address the required and recommended changes to the SMP, and will culminate in final adoption of the approved SMP Update. It is our objective to complete the SMP Update approval prior to Summer 2017.

Action and Direction Requested from Council on October 10

During the October 10 meeting, staff are requesting the City Council to:

1. Hold the required public hearing on the CAO Update LUCA; and
2. Provide direction to staff on whether to finalize the Resolution and CAO Update LUCA for final action.

Following completion of the code amendment process, including a public hearing and adoption of a Resolution by the City Council, the adopted documents will be forwarded to the appropriate state agencies to complete the updates required under Shoreline Management and Growth Management Acts. 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 Bellevue SMP Update process. 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.

EFFECTIVE DATE

If approved, the Resolution would become effective immediately upon Council adoption.

The CAO Update LUCA would become 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.

OPTIONS

1. Open the public hearing, take testimony on the CAO Update LUCA, and close the public hearing.
2. Provide direction to staff on whether to finalize the Resolution for final action to transmit either the:
 - a. Narrowly tailored code amendment as presented in Attachment A-3; or
 - b. Narrowly tailored code amendment revised to ameliorate the effects of the unintended consequences of the rating system changes on lake-fringe wetland buffers as presented in Attachment C.
3. Provide alternative direction to staff.

RECOMMENDATION

Option 1 and 2b.

MOTION

The City Council directs staff to finalize the Resolution for final Council action transmitting the CAO Update LUCA revised to ameliorate the effects of the unintended consequences of the rating system changes on lake-fringe wetland buffers as presented in Attachment C.

ATTACHMENTS

- A. LUCA Staff Report
 - 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 Property CAO Revisions on Property Owners
- B. WSSA Email Transmittal and Letter
- C. Draft Resolution and CAO Update LUCA revised to respond to public comment regarding lake-fringe wetlands