

# City of Bellevue



## STAFF REPORT

DATE: June 25, 2020

TO: Mayor Robinson and Members of the City Council

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**SUBJECT:** Public Hearing on the Land Use Code Amendment (LUCA) to conform the frequently flooded areas regulations in the Land Use Code (LUC) to current federal and state standards and to adopt the Federal Emergency Management Agency's (FEMA) updated countywide Flood Insurance Rate Maps (FIRMs) and Flood Insurance Study (FIS). The LUCA includes necessary amendments required by FEMA and the Washington State Department of Ecology (Ecology) for the City's continued eligibility in the National Flood Insurance Program (NFIP). File No. 20-108386-AD.

### I. BACKGROUND

Frequently Flooded Areas include the land subject to one-hundred-year floodplain, or when there is a one-percent or greater chance of flood each year. These areas are identified on FEMA's FIRMs and FIS. The City regulates development within frequently flooded areas through provisions in (1) chapter 20.25H LUC, Critical Areas Ordinance; (2) Part 20.30G LUC, Variance from the LUC; (3) chapter 20.45A LUC, Platting and Subdivisions; and (4) chapter 20.45B LUC, Short Plats and Short Subdivisions.

The critical areas regulations and shoreline management regulations work together with floodplain management regulations to require protection to critical areas, and necessary mitigation for impacts. For instance, setback or buffer requirements for shorelines, streams, and wetlands will require a structure to be placed outside of the floodplain. In fact, the critical areas regulations prohibit the construction of residential structures in a floodplain, except when maintaining an existing structure, or reasonable use of a property is lost due to the extent of a floodplain. In the rare occasion that development must occur within a floodplain, the Frequently Flooded Areas requirements are utilized during development review to ensure new development, including utilities and other infrastructure, is flood-proofed to minimize risk to people and damage to property.

#### A. Purpose of the Recommended LUCA

In the June 15 Study Session, the City Council initiated this LUCA to update the City's frequently flooded areas regulations in the LUC and to adopt updated FIRMs and FIS transmitted to the City earlier on February 19. FEMA requires communities to have in place conforming regulations within six months of the transmittal date, or August 19, in order for continued eligibility for Bellevue residents and businesses to obtain insurance and participate in

the NFIP. If the City does not take this legislative action by August 19, then residents and businesses in Bellevue would lose their federally-backed flood insurance.

The NFIP is a federal flood insurance program that the City has participated in since December 1, 1978 by adopting minimum standards for development in FEMA floodplains. The NFIP aims to protect human life and safety, minimize environmental and property damage, and reduce expenditures for disaster assistance and flood control. The requirements to adopt the updated FIRMs and FIS and conform the City's frequently flooded areas regulations to applicable federal and state standards are consistent with the goals of preserving and promoting healthy floodplains and biological processes.

Participation in the NFIP allows any property owner in the City to purchase federal-backed flood insurance. The City has a Class 5 rating in FEMA's Community Rating System (CRS). The CRS program uses a rating scale of 9 to 1, with most communities entering the program at a CRS Class 9, which entitles residents to a 5 percent discount on their flood insurance premiums. As a community implements additional floodplain requirements, its residents become eligible for increased NFIP policy premium discounts. Bellevue's excellent CRS rating provides the City's residents and businesses a 25-percent discount on NFIP-backed flood insurance policies in the City.

Ecology data shows that 229 insurance policies are issued in Bellevue, with 116 (51%) were written for properties in the floodplain, and 113 (49%) were written for properties outside of the floodplain. As of April 17, 2020, the total number of NFIP claims paid out to Bellevue residents and businesses since the City entered the NFIP program in 1978 is 65 flood claims for a total of \$906,231. However, given Bellevue's strong legacy of effective floodplain management, there have been only five substantial damage claims—those exceeding 50% of the home's value—in the City since 1978.

## **B. Recommended LUCA**

The current FIRMs and FIS were published in 1995. The maps and study are used by real estate agents, lenders, and insurance companies to assess when flood insurance is needed on a particular property under the NFIP. The City's Critical Areas Ordinance, chapter 20.25H LUC, references these maps as "Frequently Flooded Areas" and restricts development in these areas to prevent damage to structures and the natural floodplain functions.

The maps generally delineate the "100-year floodplain" on Lake Bellevue, Larsen Lake, Phantom Lake, Lake Sammamish, and most streams in the City. Within this "100-year floodplain" there is a one-percent chance, in a given year, that floodwaters will rise to this level. Note that Lake Washington is not included in the maps because its level is controlled by the US Army Corps of Engineers at the Hiram M. Chittenden locks and the level predictably only varies by two feet annually.

Staff is working closely with Ecology to narrowly tailor this recommended LUCA to achieve conformance with only items deemed necessary by FEMA and Ecology. The draft LUCA in strike-draft format is provided in Attachment A. The following examples explain the categories and components of this LUCA:

Necessary amendments to the definitions

Twelve new definitions are to be added to the LUC, and six definitions are to be amended in order to improve clarity. These changes provide consistency with federal standards and are required by FEMA.

New terms added to the LUC:	Amended terms in the LUC:
<ul style="list-style-type: none"><li>• Alteration of watercourse;</li><li>• Area of special flood hazard;</li><li>• Base flood;</li><li>• Flood elevation study;</li><li>• Floodplain or flood-prone area;</li><li>• Floodplain administrator;</li><li>• Highest adjacent grade;</li><li>• Historic structure;</li><li>• Mean sea level;</li><li>• New construction;</li><li>• Start of construction; and</li><li>• Variance</li></ul>	<ul style="list-style-type: none"><li>• Base flood elevation (BFE);</li><li>• Flood or flooding;</li><li>• Flood Insurance Rate Map (FIRM);</li><li>• Floodproofing;</li><li>• Floodway; and</li><li>• Substantial improvement</li></ul>

Necessary amendments to the performance standards

The City's floodplain performance standards are intended to prevent flood damage and to prevent the actions of one property owner from increasing flood damage to their neighbors. The amendments to the performance standards aim to improve flood prevention measures, and the changes are necessary to achieve consistency with federal and state regulations.

An example is a new standard to require automatic entry and exit of floodwaters for a garage attached to a residential structure, built below the Base Flood Elevation (BFE), for residential and mixed-use projects. Another example is to introduce the option for a project to waterproof mechanical equipment and utilities associated with the development instead of solely requiring these attendant utilities to be elevated one foot or more above the BFE.

In addition, FEMA and Ecology require that the LUCA includes removal of the "legally established existing development" provision from the Frequently Flooded Areas section. Note that this removal does not change how proposals to modify an existing development or structure is reviewed. Under the current LUC, when an existing development or structure within a floodplain is proposed to be modified, staff will review the proposal under the "substantial improvements" provisions. This means that if the cost of the proposed building improvements exceeds 50 percent of the existing structure's value, then the scope of improvements must be reduced to below that 50 percent threshold, or the entire structure must be brought into compliance with the current floodplain regulations. As such, the removal of the "legally established existing development" provision is only to achieve consistency with FEMA requirements and does not change the review and requirements for projects involving existing development within a floodplain.

#### Necessary amendments to the floodplain Variance process

The City requires conformance to the performance standards, except in the case of a reasonable use exception, where a development must comply with the required performance standards “to the maximum extent feasible.” FEMA requires the use of “Variances” to allow modifications of the performance standards in LUC 20.25H.180 – Development in the area of special flood hazard. The amendments include requiring a variance process if a proposed development in a frequently flooded area does not comply with all required performance standards and corresponding decision criteria consistent with FEMA’s requirements.

#### Necessary amendments to procedural requirements

The proposed amendments provide that the Director of Development Services must review certain application submittals and materials when evaluating and approving proposals for development within a frequently flooded area. In addition, FEMA requires the City to formally cite the applicable enforcement process and penalties sections in its frequently flooded areas code. This recommended LUCA contains new subsections in the City’s Critical Areas Overlay District, Part 20.25H LUC, to clarify enforcement and penalties for violations of the City’s floodplain regulations.

### **II. REVIEW PROCESS**

In the June 15 Study Session, the recommended LUCA was introduced to Council. After this introduction and discussion, Council initiated this recommended LUCA to update chapter 20.25H LUC and other LUC sections related to frequently flooded areas and to adopt updated FIRMs and FIS transmitted to the City earlier on February 19. Council decided to hold the required public hearing associated with the LUCA in order to meet the required effective date of August 19. The public hearing is scheduled for July 13, and Council may take final action after this public hearing.

The EBCC will be introduced to the recommended LUCA on June 30. The EBCC is scheduled to hold a public hearing and to take action on August 4.

### **III. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The Environmental Coordinator for the City of Bellevue utilized the optional determination of non-significance (DNS) process which allows a lead agency to combine the SEPA comment period with the Notice of Application prior to issuing the DNS. As such, the final threshold determination is expected before the public hearing scheduled for July 13, 2020.

### **IV. PUBLIC NOTICE**

#### Required Public Notice

The notice required for City Council Legislative Actions (Process IV) is governed by LUC 20.35.415 through 20.35.450. Notice of the LUCA application, including notice of the SEPA, was published in the Weekly Permit Bulletin on June 18, and availability of the Weekly Permit Bulletin was noticed in the Seattle Times. Notice of the Public Hearing was published in the Weekly Permit Bulletin on June 25, along with availability of this staff report, and in the Seattle Times on June 29. The notice of public hearing was also provided to members of the EBCC,

individual properties within a mapped floodplain, and those individuals who have subscribed to receive these notices and those who have expressed interest on this topic.

#### Department of Commerce Notice

Pursuant to the Washington State Growth Management Act, proposed amendments to the LUC must be sent to the Washington State Department of Commerce. The required notice to the Department of Commerce and the initial draft LUCA were transmitted on June 22, 2020, and a copy of both documents is available for review in the code amendment file. The LUCA is identified by Commerce as ID\_2020-S-1498. No comments have been received by Commerce as of the date of this report.

#### Enhanced Public Notice

In addition to the requirements of LUC 20.35.415 *et seq* for City Council Legislative Actions, staff has provided enhanced public outreach for this LUCA. This outreach includes the following:

- Direct Mailing Notice. A courtesy notice of the recommended LUCA and the notice of public hearing on the proposed LUCA was sent directly to property owners and residents impacted by floodplains.
- Online Presence. A webpage was launched for this LUCA during the week of June 8. The webpage provides opportunity for the public to learn about the LUCA, with sections on frequently asked questions, pending FIRMs and FISs, public information messages regarding the LUCA progression, and staff contact information to submit written comments.

#### Public Comments

As of the date of this staff report, staff has received eight email inquiries, primarily seeking clarification on the significance of the proposed amendments and the effect of the FIRM and FIS adoption.

### **V. DECISION CRITERIA**

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the LUC. Those criteria, and the relationship of these proposed amendments to them, are discussed below:

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

**Finding:** The proposed amendment is consistent with the Comprehensive Plan. The amendments ensure the City's floodplain management regulations are consistent with current state and federal requirements, preserve the 100-year floodplain, and protect life and property from risk of flood damage. The proposed code amendment is supported by the Environment Comprehensive Plan policies:

**Policy EN-25.** Restore and protect the biological health and diversity of the Lake Washington and Lake Sammamish basins in Bellevue's jurisdiction.

**Policy EN-62.** Preserve and maintain the 100-year floodplain in a natural and undeveloped state, and restore conditions that have become degraded.

**Policy EN-76.** Develop programs and regulations acknowledging that designated critical areas such as wetlands, shorelines, riparian corridors, floodplains, and steep slopes provide multiple functions including fish and wildlife habitat.

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

**Finding:** The amendment will enhance the public health, safety and welfare of people by protecting structures from the 100-year flood and by restricting development in these areas to prevent damage to structures and the natural floodplain functions.

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 of the City as it will allow continued participation in the NFIP, which provides opportunity for property owners and businesses to purchase cost-effective federal-backed flood insurance, while managing development in floodplains to reduce damages associated with flooding. The amendment is the minimum necessary to achieve conformance with federal and state requirements, necessary for continued eligibility in NFIP.

## VI. RECOMMENDATION

Staff has concluded that the amendment to the frequently flooded areas regulations in the LUC as drafted in Attachment A is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC, and recommends the LUCA to the City Council for final approval.

## ATTACHMENTS:

A. Recommended LUCA strike-draft