



MEMORANDUM

Date: November 3, 2015

To: Planning Commission

From: Teresa Swan, Senior Planner
Jeremy McMahan, Development Review Manager
Paul Stewart, Deputy Director, AICP

Subject: Chapter 90 KZC (Critical Areas Ordinance) Amendments, File CAM15-01832, #2

I. RECOMMENDATION

Staff recommends that the Planning Commission receive a briefing on the upcoming code amendments to Chapter 90 KZC regulations addressing wetlands, streams and frequently flooded areas.

II. BACKGROUND

Under the Growth Management Act, RCW 36.70A.040, the City was required to complete its periodic updates to the Comprehensive Plan and development regulations by June 30, 2015, except updates to Critical Areas regulations could be completed one year later. Thus, the state deadline is **June 30, 2016**, to adopt amendments to its Critical Areas Ordinance.

Critical areas include the following areas and ecosystems:

- Wetlands
- Fish and wildlife habitat conservation areas, including streams
- Frequently flooded areas (floodplains)
- Areas with critical recharging effect on aquifers used for potable water
- Geologically Hazardous areas (e.g., areas prone to landslides, erosion or seismic reaction)

[WAC 365-195-900](#) and [RCW 36.70A.172 \(1\)](#) require that cities and counties must include the "**best available science**" or BAS information when developing policies and regulations to conserve and protect the functions and values of critical areas. The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species. As salmonid fish species play an extremely important role in the ecosystem and are vital cultural resources, jurisdictions must also "give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries."

The City has had critical areas regulations in place since the early 1980's and updated them in 1992. During the 1990's, state law was passed that required cities and counties to adopt regulations based on best available science to protect the functions and values of critical areas and to preserve or enhance anadromous fisheries (e.g. salmon and cutthroat trout). On April 2, 2002, the City adopted Ordinance 3834 making interim regulations that had been in place for four years a permanent part of the code. [Chapter 90 KZC](#) (called Drainage Basins) addresses wetlands, streams and frequently flooded areas based on best available science at that time.

Soon after adoption of the City's Chapter 90, the **Washington Department of Ecology** (Ecology) issued [new guidance](#) on best available science for critical areas. The result of the new guidance resulted in greater critical area buffer widths and more restrictive buffer reduction allowances, among other changes. Since the City had just adopted Chapter 90, the Department of Ecology agreed that the City could wait to a later date to revise its regulations to meet the new guidance on best available science. Ecology adopted a new **wetland rating system** and then updated it again in [2014](#). Thus, wetland buffers under the new Ecology guidance are greater than the City's current buffer widths and the rating system is more detailed and uses different criteria. The City must now bring its wetland regulations and rating system in line with Ecology's guidance.

Washington Department of Fish and Wildlife (WDFW) issued guidance on fish and wildlife habitat conservation areas, including streams since the City's adopted its 2002 Critical Areas Ordinance. The stream buffers under WDFW guidance are greater than the City's current buffer widths. The City must now bring its stream regulations in line with Department of Fish and Wildlife guidance.

Under GMA the City also must consider the protection of **habitat of endangered, threatened or sensitive species** as fish and wildlife habitat conservation areas. Sensitive species are any wildlife native to the state that are vulnerable or declining and are likely to become Endangered or Threatened in a significant portion of their range within the State without cooperative management or removal of threats. Priority Habitat and Species listing is considered Best Available Science under GMA. The City must now consider the [WDFW Priority Habitats and Species list as a Sensitive Species](#).

In 2010, the City adopted its Shoreline Master Program (SMP), updated as required by GMA, and then amended it in 2011 to incorporate the annexation area. The SMP regulates properties within 200 feet of Lake Washington and wetland areas associated with the lake. The City was required to have critical area regulations in the SMP that meet the updated best available science standards. King County's wetlands and stream buffer standards, buffer reductions and compensatory mitigation regulations were used as a basis for the City's shoreline critical areas in Section 83.490-510 KZC because they meet Ecology's best available science guidelines and the annexation had already been subject to those same standards. Thus, the City is in **compliance with GMA for critical areas protection for its shoreline area**.

The City has regulations addressing **Geologically Hazardous areas** (e.g., areas prone to landslides, erosion or seismic reaction) in Chapter 85 KZC. Best available science guidance on the subject of Geologically Hazardous areas has not advanced in the same manner as science for stream and wetland protection. Thus, the City believes that it meets the GMA requirement of having regulations for these areas. However, available technology for mapping and understanding

geologically hazardous areas has advanced with tools such as Lidar. The City is in the process of hiring a consultant to update Kirkland's geologic hazard maps and will evaluate the regulations in Chapter 85 once the mapping is done. Review of the regulations in Chapter 85 will be done after the amendments to Chapter 90 are completed.

III. SCOPE OF WORK

The City has contracted with **The Watershed Company** to provide professional assistance and support for the Chapter 90 KZC update. Watershed is very familiar with Kirkland's critical areas because it is the City's on-going consultants for wetland delineations, stream classifications, and peer review for critical areas mitigation and monitoring. The company has also assisted numerous other local cities in updates to their critical areas ordinances.

The **Scope of Work** for the consultants is provided in Attachment 1. The Watershed Company will prepare a **Best Available Science (BAS) Report** summarizing the latest in scientific findings and accepted standards for protection and mitigation of critical areas. The report will place specific emphasis on making clear connections between development impacts and potential mitigation measures. In conjunction with the BAS Report, Watershed will prepare a **Gap Analysis Report** comparing the City's existing code with GMA requirements and approaches to buffer widths, mitigation, non-conformances, to comply with State Departments of Ecology and Fish and Wildlife and U.S. Army Corp of Engineer guidance. Based on the two reports, the consultants will provide recommendations on changes to the City's regulations.

Staff is currently preparing a series of tables and summaries that reflect the critical area regulations for other **local cities and King County**. These jurisdictions have regulations that are more up to date than Kirkland's regulations in meeting the current best available science with greater buffers and less buffer reductions than the City. These summaries will be available for the Planning Commission's meeting in January 2016. The information will provide the Planning Commission, City Council and property owners with the range of what other local jurisdictions require.

The Watershed Company will also review past projects in Kirkland to evaluate past approaches to **mitigation, maintenance and monitoring** of buffer reduction mitigation. City staff spends considerable amount of time following up on monitoring and maintenance of wetland and stream buffer mitigation. Watershed will then provide recommendations on changes to the City's approach to hopefully find a simpler and less time consuming process.

Then staff will prepare **code amendments** to Chapter 90 KZC with input from Watershed that meets BAS standards. Opportunities will be considered that provide potential incentives to allow development flexibility. Once draft regulations are prepared, Watershed will develop three to four **scenarios on selected sites** within the city to test the proposed regulations.

The Watershed Company will attend the open houses, study sessions and public hearings, and provide technical assistance and graphic support for public involvement.

IV. PROJECT SCHEDULE AND PUBLIC OUTREACH

Given the City's deadline of June 30, 2016, the update process will need to be compressed and fast tracked. See Attachment 2 for the **tentative project schedule**. Based on the schedule, it is possible that the City will not meet the State's June 30, 2016, however adoption is tentatively scheduled shortly thereafter on July 5, 2016. The most challenging part of the process is preparing the code amendments in about eight weeks and having the Planning Commission complete its review, hold a hearing and prepare a recommendation on the code amendments in four meetings.

Staff will keep the Department of Commerce, which is responsible for overseeing GMA compliance, informed of the City's progress. Commerce will take into consideration the City's progress on the code amendments and its intent to adopt the new regulations as close to the deadline as possible.

Public interest in the Chapter 90 KZC update will include property owners with critical areas or those who have required buffers from adjacent critical areas, developers, environmental organizations, state and federal agencies, and the local tribes.

The **public outreach opportunities** will be as follows:

- **December 2015:** Create a web site and listserv option.
- **January 2016:** Mail out notice to property owners, agencies and organizations. Include an article in the City's winter newsletter. Hold a joint study session with the Planning Commission and Houghton Community Council on the BAS and GAP technical reports.
- **February 2016:** Provide a briefing before the City Council and Kirkland Neighborhood Alliance (KAN) on the upcoming update. Hold an open house on background information before the Planning Commission's first study session.
- **March 2016:** Hold an open house before the second study session with the Planning Commission.
- **April 2016:** Provide an article in the City's newsletter on the upcoming hearing, and hold an open house before the joint public hearing with the Planning Commission and Houghton Community Council.
- **May 2016:** Hold a meeting on the final recommendations from the Planning Commission and Houghton Community Council.
- **June 2016:** City Council study session.
- **July 2016:** City Council adoption.
- **August 2016:** Houghton Community Council final action

Let staff know if the Commission has other ideas on the public outreach efforts.

V. PLANNING COMMISSION MEETINGS

Below is a list of the tentative Planning Commission meetings for the Chapter 90 KZC update:

- **January 28, 2016:** Joint Planning Commission and Houghton Community Council briefing on BAS and GAP reports
- **February 25, 2016:** 1st study session on code amendments
- **March 24, 2016:** 2nd study session on code amendments
- **April 28, 2016:** Joint hearing on code amendments
- **May 26, 2016:** Final recommendation

ATTACHMENTS:

1. Scope of Work
2. Schedule

THE WATERSHED COMPANY
SCOPE OF WORK
CHAPTER 90 KZC UPDATE FOR GMA CRITICAL AREAS ORDINANCE

Tasks 1-2: Technical Reports

Best Available Science (BAS) Report, Gap Analysis comparing existing code with GMA requirements and approaches to mitigation and non-conformances; and Ecology, Fish & Wildlife & Army Corps guidance. The BAS report also with specific emphasis on making clear connections between development impacts and potential mitigation measures. Preliminary recommendations on changes to standards for buffer width, buffer reduction, restoration, mitigation and non-conformances that meet State requirements tailored to the City's resources.

Includes:

- Kick-off with staff meeting (October 2015)
- Draft BAS Report and Gap Analysis (November 2015)
- Final BAS Report and Gap Analysis (December 2015)
- Follow-up City meeting (December 2015)

Task 3: Assessment of Mitigation, Monitoring, and Maintenance Alternatives

Review files and meet with staff on several past projects in Kirkland to evaluate past and future approaches to maintenance and monitoring of buffer reduction mitigations. Evaluation of current fee-in-lieu options and application for Kirkland.

Includes:

- Summary memo of alternatives and recommendations (December 2015)
- One follow-up meeting with City staff (December – held in conjunction with Tasks 1-2)

Task 4: Code Amendments

Provide technical & scientific support, recommendations and review of code amendments prepared by City staff which meet BAS standards. Include consideration of potential incentives to allow development flexibility.

Includes:

- Support staff with code amendments (January – February 2016)
- Meetings as needed with staff (January February 2016)

Task 5: Case Studies

Field work and development of three to four scenarios on selected sites within the city to test the proposed regulation revisions. Each case study includes:

- Project overview including a site diagram and any dimensional considerations;
- Discussion of proposed impacts;
- Review of applicable code requirements and methods of achieving the desired outcome, including mitigation strategies as appropriate;
- Comparison to the existing code requirements; and
- Prepare user friendly illustrative graphics of the study results.

Includes:

- Up to four case studies (January – February 2016)
- Meetings as needed with staff (January - February 2016)

Task 6: Public Involvement

Work with the City to develop a public outreach approach. Prepare materials for the City's web page. Attend open houses, study sessions and a hearing before the Planning Commission/Houghton Community Council, and meetings for the City Council. Prepare exhibits and presentations.

Includes (any combination of meetings and hearings for total of nine meetings)

- Attend study sessions and public hearing (five meetings total with the Planning Commission and Houghton Community Council (January – May 2016)
- Attend and present at two open houses (March – May 2016)
- Attend two meetings before the City Council (May-June 2016)

CHAPTER 90 (CAO) UPDATE SCHEDULE**10/26/15***Subject to change***September 2015**

- September 10: Request for Proposal issued
- September 28 Close RFP submittal (17 days after issuance)

October 2015

- October 14: Kickoff meeting
- Begin survey of local jurisdictions on regulations (intern)

November 2015

- November 12 Planning Commission briefing
- Organize code amendment list and add any Outlook comments if applicable
- Begin draft BAS Report and GAP analysis (consultants)
- Begin assessing past practices (consultants)
- Complete survey of local jurisdictions on regulations (intern)
- Meet with planners on issues, code amendment list and Outlook comments
- Create CAO update web site and listserv

December 2015

- Create email list of agencies and interest groups for notice
- Final BAS Report and GAP analysis and recommendation by end of December
- Final assessment of past practices by end of December
- Begin code revisions

January 2016

- Send out notice to property owners, agencies & organizations on CAO update
- January 11 Council committee briefing on BAS Report, GAP analysis and recommendation
- January 28 joint Planning Commission and Houghton Community Council meeting on BAS Report, GAP analysis and recommendation

February 2016

- Complete code revisions
- Begin case studies (consultants)
- February 10, 2016 KAN briefing
- February 16: City Council briefing on BAS Report, GAP analysis and recommendation
- February 25: Open House (background info) and Planning Commission #1 study session on amendments

March 2016

- March 24: Open House (draft amendments) and Planning Commission #2 study session on amendments
- March 28: HCC #1 study session on amendments (or take in two sessions starting Feb 22?)

April 2016

- Issue SEPA Determination

- April 18: 60 day Notice to Department of Commerce, copy to Tribes, Fisheries, Ecology, etc.
- April 28: Open House (recommendation) and Joint Planning Commission/HCC **hearing**

May 2016

- May 5: Council briefing
- May 12: Planning Commission final recommendation

June 2016 (*state deadline is June 30*)

- June 2: study session

July 2016

- July 5: Council adoption
- July 25: HCC final action