



City Council

Approval of Amended Critical Areas Ordinance

Agenda Date: 8/16/2016
Agenda Item Number: 4.1
File Number: 16-0745

Type: ordinance **Version:** 2 **Status:** Passed

Title

Approval of Amended Critical Areas Ordinance

Recommended Action

Committee Recommendation:

The Planning Commission voted unanimously to recommend Council adoption of the proposed Amended Critical Areas Ordinance.

City Manager Recommendation:

Move to adopt the proposed amended Critical Areas Ordinance on second reading.

Report

Issue:

Whether to adopt the amended Critical Areas Ordinance.

Staff Contact:

Linda Bentley, Senior Planner, Community Planning & Development, 360.570.3746

Presenter(s):

Linda Bentley, Senior Planner, Community Planning & Development

Background and Analysis:

Background and analysis has not changed from first to second reading.

Under the Washington State Growth Management Act (GMA), the City is required to include Critical Areas in its development regulations and update the Critical Areas Ordinance periodically as part of the City's Comprehensive Plan update. The Olympia Critical Areas Ordinance (CAO), found primarily in Olympia Municipal Code (OMC) Chapter 18.32, is the main set of development regulations that protects critical areas in the City of Olympia.

Other protections for critical areas include: Frequently flooded areas in OMC 16.70, marine and freshwater shorelines as defined by the Shoreline Management Act in OMC 18.20, and Storm and Surface Water Utilities in OMC 13.16.

There are two substantive statutory requirements in this CAO update:

Critical Areas Review for Best Available Science - The city hired ESA Associates to do a Best Available Science (BAS) review to ensure that our policies and development regulations are based on the most current science and best management practices for designating and protecting critical areas.

Anadromous Fish - Cities are required to give special consideration in their development regulations to preserve or enhance anadromous fish population and habitat. Anadromous fish, such as salmon, are those that spawn and rear in fresh water and mature in marine waters.

In addition to the changes for BAS, we also proposed amendments to some sections for improved clarity, better organization and stronger consistency with GMA requirements.

The Land Use and Environment Committee directed that the CAO update should also include a review of potential additional protections for locally important species and habitats. To ensure we could complete the BAS updates by the deadline required by state statute and to allow more time for an in-depth look at the locally important species and habitats issue, we divided the tasks into Phase 1 (BAS) and Phase 2 (species and habitats).

Phase 3 involves amendment of the City's Shoreline Master Program (SMP) to adopt the new CAO by reference, which must be approved by the Department of Ecology before the SMP is effective.

Phase 1 Status

The Planning Commission held a public hearing on June 6, 2016, to receive comments on the Phase 1 proposed updates to the CAO. Three written comments were received by the June 10 deadline. On June 20, the Planning Commission reviewed the additional amendments to the CAO recommended by staff, based on comments received, and unanimously voted to recommend to Council approval of the proposed amendments. Council adoption of the amended Critical Areas Ordinance before you tonight would complete Phase 1.

Phase 2 Status

Work has begun on Phase 2 wherein the City and consultant ESA will look at options to protect our locally important species and their habitats. This work will identify:

- gaps in current federal, state and local regulatory protections
- legal bases for protecting species and habitats
- current best practices in comparable cities
- recommendations for best ways to protect our species and habitat

Some species and habitats are known; others may be identified and considered through a technical working group meeting, public workshops and other meetings or hearings.

Tentative Phase 2 Schedule

Consultant "technical memo"	July 2016
Working group meeting	July 2016
Public information meeting	August 2016

Planning Commission/LUEC briefings July-September 2016
Final recommendations October 2016

Phase 3

Under provisions of the Washington State Shoreline Management Act, all amendments to the City's CAO must also be adopted into the City's Shoreline Master Program (SMP) and approved by the Department of Ecology (DOE) before the amended CAO is effective within designated shoreline areas (generally the land area within 200 feet of the water).

Legal Process

Because any amendments to our CAO require adoption into our SMP and subsequent approval by DOE (which can be a 4-6 month process) and we did not want the confusion of having two critical area regulations - one for shorelines and one for uplands during that gap - we have structured the legal adoption process as follows:

1. Public hearing on Phase 1 - Planning Commission, (Completed June 6, 2016)
2. Council adoption of Phase 1 CAO amendments, with no publish date, i.e., no effective date at this time
3. Planning Commission or Council public hearing on Phase 2 (any further amendments to the CAO if regulatory solutions are determined to best protect locally important species and habitats)
4. Council adoption of Phase 2 CAO amendments, with no publish date

AND

5. Concurrent Council public hearing on and adoption of amendments to the SMP adopting Phase 1 (and 2 if applicable) CAO amendments, with no publish date
6. DOE approves SMP amendment
7. Upon DOE approval, Critical Area and Shoreline Master Program Ordinances are published and effective 5 days from publication

If the Phase 2 work on protecting locally important species and habitats does not result in additional amendments to the CAO, steps 3 and 4 may be eliminated.

As long as the above-referenced process is completed before June 2017, the City will be considered in compliance with the Growth Management Act and may continue to use the current CAO and SMP until the amended CAO and SMP become effective.

Neighborhood/Community Interests (if known):

Olympia Coalition for Ecosystems Preservation, Wildfish Conservancy, and Black Hills Audubon Society submitted comments as part of the public hearing. Staff responded to each comment for Planning Commission's deliberations, agreed with many of the commenters' recommendations, and proposed further amendments as appropriate.

Options:

1. Adopt the Critical Areas Ordinance as recommended.
2. Adopt the Critical Areas Ordinance with modifications.
3. Do not adopt the Critical Areas Ordinance and refer to the Planning Commission or Land Use Committee for further consideration.

Type: ordinance **Version:** 2 **Status:** Passed

Financial Impact:

Updating the CAO and SMP to meet the statutory requirements is already a budgeted work item for Community Planning and Development in 2016. Initial review of locally important species and habitats is also included; however, some approaches to this task may require additional resources.

Attachments:

Ordinance