

MEMO

DATE: August 29, 2013
TO: City Council
FROM: Mike Smith, Community Development Director *ms*
RE: Land Development Code Update – Article 6 Critical Areas
- Frequently Flooded Areas terminology

SUMMARY: During Council's review of the draft Land Development Code Update a property owner has requested that Council amend Article 6 – Critical Areas to change the phrase "Frequently Flooded Areas" to something that is less threatening to potential purchasers/developers of properties with that critical area designation. Staff has performed a very quick analysis that shows the vast majority of jurisdictions use the term "Frequently Flooded Areas" in their CAO designations.

BACKGROUND: As background, the Growth Management Act (GMA) in RCW 36.70A.030(5) defines "Critical Areas" as including:
"... the following areas and ecosystems: (a) Wetlands; (b) areas with critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas."

There is, however, no definition of "frequently flooded areas" in the GMA.

In 36.70A.050 the GMA also requires the Department of Ecology to establish guidelines to classify "critical areas". And, in 36.70A.172, the GMA requires that "critical areas" be designated and protected by cities and counties using the best available science in developing policies and development regulations to protect the functions and values of critical areas.

In adopting the current CAO back in 2008-2009, the City utilized a "Model Critical Area Ordinance" that was prepared by the WA Department of Ecology. That document used the GMA term "frequently flooded area" and it carried over into the City's CAO.

Staff has made email inquiries to both the WA Commerce Department which oversees GMA matters and the WA Department of Ecology which oversees floodplain matters and which regulates the federal flood insurance program at the Washington State level, to determine if there is any requirement as to the term to be used.

ANALYSIS: A quick analysis was performed on the Municipal Research city/county codes site to determine how other jurisdictions reference "frequently flooded areas" in their Code's critical area ordinance. It would appear that while the vast majority of jurisdictions use the "frequently flooded areas" term from the GMA –, there are some exceptions where a different term is used such as "Special Flood Hazard Areas" or "Floodplain Management Areas". A listing of jurisdictions researched is below. Regardless of the term used for these FEMA Flood Insurance Rate Map designated flood hazard areas, the regulations to ensure that development within the flood hazard area are all quite similar to our regulations.

In preparing the draft Land Development Code Update staff and Council have been very clear that it would not amend the current Critical Area Ordinance other than to make that CAO consistent in numbering of Code Title, Chapters and Sections. That is how the document has been issued for sEPA review and how it has been presented for the mandatory 60-Day State Agency Review process currently underway.

For two reasons, Staff would recommend that if Council wants to change the term used for such flood hazard areas in the CAO, it should wait until after the Land Development Code adoption process has been completed:

1. The change in terminology for one of the 5 categories of critical areas in our CAO would likely require additional State Agency notice. As indicated above, staff has contacted the two state agencies that would likely have some interest in such an amendment but has not heard back and, due to the long holiday weekend, is not likely to hear back in a timely manner as to their thoughts in this regard.
2. Staff and the consultant are currently hard pressed to make the changes to the draft Code that City Council has provided consensus on in sufficient time to maintain the current review timeline with the Planning Commission public hearing which has been set for September 12. Making text changes in this lengthy document is not as simple as just inserting the new text where it belongs because it sometimes changes the Code's section numbering and the lengthy document then needs to be searched to make the numerical change in all places where that section is cited. To change the term "frequently flooded areas" in the CAO would require a similar detailed search of the document to ensure all references are corrected.

Other Jurisdictions

Kittitas County Title 17A – Critical Areas, Section 17A.05 – Frequently Flooded Areas

Moses Lake Section 19.03.150 – Frequently Flooded Areas

Kennewick Section 8.58.080(2)(c) – Frequently Flooded Areas

Yakima Chapter 15.27, Part Four – Flood Hazard Areas

Pullman – Section 16.50.360 – Classification of Frequently Flooded Areas

Spokane - Chapter 17E.030 – Floodplain Management

Spokane Valley – Chapter 21.30 – Floodplain Regulations

Wenatchee – Chapter 18.12A – Resource Lands/Critical Areas – Frequently Flooded Areas

East Wenatchee – Chapter 18.12A – Resource Lands/Critical Areas – Frequently Flooded Areas

Battle Ground – Chapter 18.310 – Frequently Flooded Areas

Camas – Chapter 16.61 – Frequently Flooded Areas

North Bend – Chapter 14.05.020(B)(6) Frequently Flooded Areas

- NOTE: Also has a Chapter 14.12 Floodplain Management that addresses Flood Hazard Areas
- Mount Vernon – Chapter 15.36 – Floodplain Management Standards ("Areas of Special Flood Hazard")