

2016 Critical Areas and Shoreline Master Program Amendments

May 9, 2016 City Council Meeting

Consultant Report

PROPOSAL:

The City of Roy proposes to amend its Critical Areas Code consistent with Growth Management Act (GMA) Periodic Update requirements. The proposal would amend *RCC Chapter 10-5 Critical Areas Code, RCC Chapter 10-5 Article A Wetlands, and RCC Chapter 12-3 General Shoreline Provisions*. The City's critical areas regulations are incorporated by reference into the City's Shoreline Master Program (SMP). As such, the critical areas amendments constitute amendments to the Roy SMP.

BACKGROUND:

Under the Growth Management Act, the City is directed to review, and if necessary, update its Comprehensive Plan and development regulations by June 30, 2015 to satisfy GMA periodic update requirements. A one-year extension from this deadline, ending June 30, 2016, is provided by the state for local jurisdictions to complete their critical areas review and update. The City is using a phased approach to complete the periodic update. This has included the adoption of amendments to the Comprehensive Plan, and amendments to zoning regulations and the zoning map contained in RCC Title 11 Land Development, on August 24, 2015 (Substitute Ordinance No. 928). The proposal represents the final phase of the periodic update process.

The City's critical areas regulations were last updated in 2005 in response to amended state law that requires such regulations to be based on the "Best Available Science", or BAS. Proposed amendments are largely based on recommendations provided in the Ecology's *Wetland and CAO Updates: Guidance for Small Cities – Western Washington Version*, provided with this report (Exhibit 7). An overview of the proposed amendments will be provided at the May 9th hearing.

AMENDMENT PROCESS:

Amendments to the City's development regulations are categorized as legislative actions. The Planning Commission conducted a public hearing on this matter at its rescheduled regular meeting of April 12, 2016. After reviewing the proposal and providing an opportunity for public input, the Commission voted 3-0 to recommend to Mayor and Council the approval of the amendments provided in Exhibits 3 and 4, per Planning Commission Resolution 16-01 (Exhibit 2). The RCC directs the City Council to conduct a public hearing and consider the recommendations of the Commission before making a final decision. Once the public hearing has been closed and the matter scheduled for consideration at a subsequent meeting, a preliminary ordinance will be prepared for final action.

PUBLIC NOTICE:

In accordance with RCC requirements, the City published a legal notice in the Nisqually Valley News on April 29, 2016 advertising Council's May 9th public hearing. Notice of the public hearing was posted on the City's website and mailed to agencies and stakeholders with possible interest in the matter.

SUMMARY OF KEY AMENDMENTS:

The proposal would update the City's state-mandated critical area regulations, which apply to wetlands, floodplains (frequently flooded areas), geologically hazardous areas, fish and wildlife habitat conservation areas, and aquifer recharge areas. The City proposes to amend the general provisions contained in RCC 10-5 and the wetland provisions in RCC 10-5A. No amendments are proposed for the remaining critical areas chapters as these regulations remain consistent with the best available science. Key critical areas amendments are listed below:

- Updated wetland definition
- Revised wetland map citations
- Updated wetland rating system
- New list of uses allowed (and regulated) in wetlands
- Revised list of critical area report requirements
- Updated wetland buffer requirements (buffers may be smaller or larger depending on the science)
- New list of uses allowed (and regulated) in wetland buffers
- Revised wetland compensatory mitigation requirements

The practical ramifications of the proposed amendments to properties in Roy are likely to be minimal for at least two reasons. First, there are few properties in the city that contain wetlands or wetland buffers (see Exhibit 9). Second, the amended regulations are unlikely to increase restrictions on the use and development of these properties. Instead, the amended regulations may provide greater flexibility in how a property is used in the future, depending on site-specific characteristics such as habitat quality. The amended codes will retain existing safeguards, such as reasonable use provisions, that protect private property rights.

Proposed amendments to the SMP are limited to: (1) adding the date the city's critical area regulations are amended; and (2) making a housekeeping amendment relating to wetland identification and delineation within shoreline areas.

ENVIRONMENTAL DETERMINATION:

The City directed the preparation of an Environmental Checklist and issued a *Determination of Nonsignificance (DNS)* for the proposed critical areas and SMP amendments, on March 21, 2016 (Exhibit 5). The DNS was issued with a 14-day comment/appeal period ending on April 4, 2016. The Department of Ecology submitted a comment letter on April 4th (Exhibit 8) that provides some fairly generic information pertaining to hazardous waste and toxics reduction. The City did not receive a notice of appeal prior to the deadline.

DEPARTMENT OF COMMERCE NOTIFICATION:

The City submitted a 60-day *Notice of Intent to Adopt a Development Regulation Amendment* to the Washington State Department of Commerce on March 21, 2016 (Exhibit 6). The state agency comment period will end on May 20, 2016. As of the date this report was issued, the City had not received any comment. If comments are received prior to the May 9th hearing or May 20th comment deadline, they will be provided to Mayor and Council for consideration.

ANALYSIS:

The proposal consists of a development regulation text amendment, which is a Type V application proposal. The review and approval criteria are provided in RCC 11-36-4 and reiterated below:

11-36-4 Criteria for amendment approval: Before the City Council may approve the amendment, it shall adopt written findings showing that the following criteria are met by the proposal:

A. The proposed amendment is consistent with the goals, objectives and policies of the comprehensive plan.

B. The proposed amendment will promote, rather than detract from, the public health, safety, morals and general welfare.

Consultant believes each criterion will be met by the proposal. The Comprehensive Plan provides considerable policy support for protecting environmentally sensitive areas of the community, including critical areas such as wetlands and their buffers. The proposal promotes public health and general welfare by using science-based regulation to protect these environmentally sensitive areas while ensuring that private property rights will be protected.

RECOMMENDATION:

The Planning Commission recommends approval of the proposed amendments in Exhibits 3 and 4, based on the findings and conclusions in Planning Commission Resolution 16-01 (Exhibit 2).

Exhibits:

1. Consultant Report to Mayor and Council for the May 9, 2016 Meeting
2. Planning Commission Resolution 16-01
3. Draft Critical Areas Amendments --- RCC Chapters 10-5 and 12-3
4. Draft Critical Areas Amendments --- RCC Chapter 10-5A
5. SEPA DNS and Environmental Checklist
6. Commerce Notice of Intent to Adopt Amendment
7. Wetland and CAO Updates: Guidance for Small Cities – Western Washington Version
8. Ecology SEPA Comment Letter
9. Roy SMP Wetland Map