



MEMORANDUM

DATE: June 1, 2011

TO: Chair Ferris and Members of the Planning Commission

FROM: Catherine A. Drews, Legal Planner, 425-452-6134
Development Service Department

SUBJECT: Draft FEMA Consistency Land Use Code Amendment Public Hearing

At the June 8 meeting, the Planning Commission will be asked to hold a second public hearing on the draft Federal Emergency Management Agency (FEMA) Consistency Land Use Code (LUC) amendments. The revised staff recommendation is included as Attachment A. This topic was previously reviewed by the Planning Commission on May 26, 2010, at which time the Commission recommended that the Council approve the amendments. The purpose of this second public hearing is to receive public testimony on the draft code amendments, including those amendments added as a result of a Community Assistance Visit that occurred after the earlier public hearing.

The proposed LUC amendments are required for consistency with federal and state floodplain management regulations in order to maintain eligibility in FEMA's National Flood Insurance Program (NFIP). FEMA established July 2011 as the deadline to complete the consistency amendments to the City's floodplain regulations.

At the public hearing, staff will provide an overview of the NFIP and the proposed code amendments and answer Commission questions. Comments received on the draft FEMA Consistency LUC amendments since its release for the May 26, 2010, public hearing are included as Attachment B to this transmittal for Planning Commission reference and inclusion in the public hearing record. At the conclusion of the June 8 public hearing, staff will ask the Commission to provide its recommendation to Council on the FEMA consistency LUC amendments. Below is sample motion language for the recommendation:

Draft motion language: *I move that the Planning Commission recommend to the Bellevue City Council adoption of the revised FEMA consistency Land Use Code amendments.*

Questions or comments regarding the draft FEMA Consistency LUC amendments may be directed to Catherine Drews at 425-452-6134 or by email at cdrews@bellevuewa.gov.

Attachments

- A FEMA Consistency LUC amendments revised staff recommendation
- B Public comments

City of
Bellevue



MEMORANDUM

DATE: May 17, 2011

TO: Chair Ferris and Members of the Planning Commission

FROM: Catherine A. Drews, Legal Planner. 425-452-6134
Development Services Department

SUBJECT: Revised Staff Recommendation—FEMA Consistency LUCA, File No. 10-106986 AD

This memorandum presents the revised report and recommendation of the Development Services Department (DSD) on the proposal to amend the Land Use Code (LUC) for consistency with the Federal Emergency Management Agency's (FEMA) floodplain management requirements for participation and maintenance of eligibility in FEMA's National Flood Insurance Program (NFIP). The NFIP provides flood insurance to all Bellevue residents for water damage related to surface water flooding. Participation in NFIP is required to obtain federally-backed loans for structures built in the floodplain, and is also required to receive federal aid from the Flood Mitigation Assistance and Hazard Mitigation Grant programs. Because Bellevue's floodplain management efforts exceed the minimum requirements established by FEMA, Bellevue's residents enjoy a discounted rate on their insurance premiums.

Staff has revised the proposed LUC amendment presented to the Planning Commission on April 14 and May 26, 2010 in response to direction from the City Council and the Washington State Department of Ecology. This proposed LUC amendment ensures consistency between the City's floodplain management regulations and FEMA and state's floodplain management requirements. A copy of the revised proposed LUC amendment ordinance is included with this memorandum as Attachment A.

Because these provisions are components of the Critical Areas Overlay, the FEMA consistency amendments to the LUC were proposed to be consolidated with the Critical Areas Overlay provisions that will ultimately be amended as part of the Shoreline Master Program (SMP) update. However, the deadline to complete the consistency amendments to the City's floodplain regulations is July 2011, and the SMP update has taken longer than anticipated. To meet this deadline, staff is bringing the FEMA consistency amendments forward outside of the SMP update.

Following the second public hearing scheduled for June 8, 2011, and consideration of public comment, staff requests that the Planning Commission prepare a recommendation to the City Council on the revised code amendments included in Attachment A.

I. Background on the National Flood Insurance Program.

The NFIP was created in 1968 to offer an alternative to disaster assistance for properties facing flood damage. The NFIP provides reasonably-priced flood insurance to residents in participating communities. In return, participating communities agree to regulate development in the floodplain consistent with criteria set forth in the NFIP. Consistency with the NFIP minimum criteria is required to participate in the program and the NFIP Community Rating System recognizes community floodplain management that goes beyond the minimum requirements of the NFIP by reducing insurance premiums for the community's property owners. Bellevue residents benefit from the City's CRS rating by receiving lower insurance premiums.

The Washington State Department of Ecology (Ecology) is the designated State Coordinating Agency (SCA) for the NFIP. One of Ecology's responsibilities as the SCA is to review participating communities' floodplain management regulations to ensure they meet required minimum federal and state standards. In 2009, Utilities Department staff requested Ecology review the City's floodplain provisions to confirm they satisfy the NFIP minimum criteria and the State Floodplain Management Standards, Chapter 86.16 RCW. Ecology's review identified minor inconsistencies that the City must correct to maintain its standing in the NFIP program. Ecology also found that the City's floodplain program in many instances significantly improved on FEMA's minimum standards. This finding was subsequently confirmed during a Community Assistance Visit with Ecology on June 24, 2010. At the visit, however, Ecology identified three deficiencies that must be addressed and responsive clarifications are included in the revised code amendment proposal and discussed in section III of this memorandum.

The City of Bellevue has participated in the NFIP since 1978. (Ord. No. 2645, Oct. 30, 1978). Since 1978, FEMA data shows that 247 insurance policies have been issued in Bellevue, with a value exceeding \$56,436,000.¹ Of these 247 policies, only 88 were written for properties in the floodplain (35%), while 159 were written for properties out of the floodplain² (66%). Of the policies, 234 cover single-family residences, while 13 cover non-residential structures. The average premium for flood insurance in Bellevue is \$345 annually, reflecting the discount Bellevue residents receive from the City's CRS rating. The average coverage amount is \$245,089.

During the life of Bellevue's participation in the program, there have been 28 paid claims for a total of \$527,704 paid in benefits, with the paid claims averaging \$18,847. Two of these claims were substantial claims, meaning the claim exceeded 50% of the value of the home.

II. Procedural Background

¹ Because of privacy issues, staff was unable to obtain a map showing the location of NFIP participants.

² Flood insurance covers flood damage associated with many types of surface water flooding, such as burst pipes. The policies do not cover flooding related to ground water seepage.

On April 14, 2010, staff sought, and received, concurrence from the Planning Commission to initiate code amendments to ensure consistency between the City's floodplain management regulations and FEMA and state floodplain management requirements. The Planning Commission held a public hearing on the proposed code amendment on May 26, 2010. The proposed amendments to the LUC are also within the jurisdiction of the East Bellevue Community Council (EBCC). A courtesy hearing was held with the EBCC at their regular meeting on May 4, 2010. No comments were submitted by either the public or the EBCC regarding the proposed amendments.

At the May 26 public hearing, the Planning Commission received testimony from one resident, asking that the proposed amendment be postponed until completion of the City's Shoreline Master Program. Staff also received one email inquiry seeking clarification on the significance of the proposed amendment. After the public hearing on June 7, 2010, the Planning Commission prepared a transmittal to the City Council unanimously recommending approval of the proposed code package

Before the Council study session on June 14, 2010, Ecology scheduled a Community Assistance Visit (CAV), on behalf of FEMA, to review the City's flood management regulations and program. To prepare for the CAV, staff from Utilities and DSD met with Ecology representatives on June 2, 2010. In response to Ecology feedback, LUC amendments beyond those recommended by the Planning Commission were added to the proposed ordinance presented to Council on June 14, 2010. Council directed staff to return to the Planning Commission and present the Ecology-directed amendments to the Commission. Specifically, as a result of the CAV, Ecology is directing the City to:

1. Include a reference to 44 C.F.R. 60.3(b)(5)(iii) for record inspection and retention related to floodplain management.
2. Amend the specific performance standards for new construction allowed through the reasonable use process to be consistent with the specific performance standards for modification of existing development and existing nonconforming development. This proposed amendment requires new residential construction to include openings, such as windows or doors, which allow the entry and exit of floodwaters.
3. Include federal and state requirements for the regulatory floodway. In Bellevue, the regulatory floodway applies only to Kelsey Creek. Staff has provided a map in the desk packet showing the extent of the floodway. The floodway is located within the floodplain and is where water velocities would be the greatest and most destructive during a flood. See Attachment C. The floodway regulations were required when the City joined the NFIP in 1978 and were included in Ordinance No. 2645 when it was adopted, but they are no longer in the City's floodplain regulations and need to be reinstated to ensure consistency with federal and state floodplain requirements.

The amendments proposed to respond to Ecology feedback are included in Attachment A and together with the other proposed amendments will ensure that Bellevue citizens will continue to have access to flood insurance not only to protect existing structures, but also so property owners may obtain lending for projects occurring in the floodplain. The amendment also supports Bellevue's CRS rating that lowers insurance premiums.

III. PROPOSAL

The proposed ordinance was prepared in response to Ecology's 2009 and 2010 review of the City's floodplain regulations, following review of Chapter 20.25H Part IX (Areas of Special Flood Hazards), and consultation with Utilities Department staff.

Staff recommends approval of the proposed code amendments to ensure consistency between the City's floodplain management regulations and federal and state requirements. Specifically, staff recommends the following LUC amendments:

LUC Part 20.25H, Areas of Special Flood Hazards

1. 20.25H.175.A.1. Amend reference to City engineering standards.
2. 20.25H.175.A.2. Update reference to Flood Insurance Study from December 1978 to April 19, 2005.
3. 20.25H.177 (Definitions). The following definitions must either be added or amended, and apply only to regulations for the area of special flood hazard:
 - Correct code reference in definition of "Lowest Floor."
 - Amend "Substantial Improvement" for consistency with NFIP by replacing "replacement value" with "market value."

New definitions include:

- "Development" means any man-made change to improved or unimproved real estate in the Regulatory Floodplain, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- "Encroachment" means any alteration or development within the regulatory floodway that would result in any increase in the flood levels during the occurrence of the base flood discharge.
- "Floodway" means the channel of a river or stream and overbank areas adjacent to the channel. The floodway carries the bulk of floodwater downstream and is usually the area where water velocities and forces are the greatest and most destructive. The floodway and the adjacent land areas must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- "Regulatory Floodway" means the floodway delineated on the flood insurance rate map (FIRM).

- “Substantial Damage” means damage of any origin sustained by a structure where the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
4. 20.25H.180.C.1.c. Ensure consistency with requirements of the new regulated regulatory floodway provision in 20.25H.180.C.5.
 5. 20.25H.180.C.2. The Executive Director of the Board of Registration for Professional Engineers and Land Surveyors has determined that only professionally licensed surveyors may complete elevation certificates. Therefore, the City must delete licensed engineers as persons who may complete elevation certificates.
 6. 20.25H.180.C.2. Add record retention requirement consistent with 44 CFR 60.3(b)(5)(iii).
 7. 20.25H.180.C.5. Add new provision that prohibits development in the regulatory floodway, unless a professional engineer certifies that the development will not cause a rise in the base flood elevation (BFE). Limit allowable repair and reconstruction of residences located in the floodway to up to 50% of the market value of the structure. This provision also provides a mechanism for property owners to seek Ecology approval to reconstruct residential structures that are damaged beyond the 50% market value threshold.
 8. 20.25H.180.D.7. Requires a reasonable use exception (LUC 20.25H.190) to comply with the regulatory floodway provisions in 20.25H.180.C.5.

IV. STATE ENVIRONMENTAL POLICY ACT

The Environmental Coordinator for the City of Bellevue determined that this proposal will not result in any probable, significant, adverse environmental impacts. A final threshold determination of nonsignificance (DNS) was issued on May 13, 2010. The final threshold determination is attached to this memorandum as Attachment B.

V. PUBLIC NOTICE, PARTICIPATION, COMMENT AND RESPONSE

The FEMA Consistency Code amendment was introduced at a study session with the Planning Commission on April 14, 2010. During that study session, the Planning Commission directed staff to proceed to a public hearing on the proposed amendment, scheduled for May 26, 2010. Notice of the Public Hearing before the Planning Commission was published in the Weekly Permit Bulletin on May 6, 2010. A second public hearing is scheduled for June 8, 2011. Notice of the Public Hearing will be published in the Weekly Permit Bulletin on May 19, 2011.

The proposed amendments to the LUC are within the jurisdiction of the East Bellevue Community Council. A courtesy hearing was held with the EBCC at their regular meeting on May 4, 2010. Notice of the courtesy hearing was published on April 27, 2010. A second courtesy hearing on the proposed code amendment is scheduled for

June 7, 2011, and notice of the courtesy hearing is scheduled for publication on or before May 31, 2011.

Under the requirements of the Growth Management Act, state agencies must be given an opportunity to review and comment on proposed amendments to the LUC. Copies of the draft FEMA Consistency code amendment ordinance were provided to the state agencies for review on April 15, 2010. No comment letters were received by DSD before release of this staff report. Comments received after release of the staff report will be forwarded to the Planning Commission before to the public hearing. Copies of the revised FEMA consistency amendment were provided to the state agencies for review on May 17, 2011.

VI. APPLICABLE DECISION CRITERIA – LAND USE CODE PART 20.30J

The Planning Commission may recommend and the City Council may approve or approve with modifications an amendment to the text of the Land Use Code if:

A. The amendment is in accord with the Comprehensive Plan; and

The proposed amendment is consistent with the Comprehensive Plan. The proposed amendments assure the City's floodplain management regulations are consistent with state and federal requirements, and consequently preserve the 100-year floodplain, and protect property from flood damage. The proposed code amendment is supported by Environmental and Land Use Comprehensive Plan policies:

Policy EN-40. Preserve and maintain the 100-year floodplain in a natural and undeveloped state, and restore conditions that have become degraded.

Policy EN-44. Regulate land use and development to protect topographic, geologic, vegetational, and hydrological features.

B. The amendment bears a substantial relationship to the public health, safety or welfare; and

The proposed amendment protects the public health and safety by protecting structures from the 100-year flood and by restricting development in the floodplain and reducing corresponding flood damage.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Participating in the NFIP is in the best interests of Bellevue citizens because the NFIP provides cost-effective flood insurance programs, while managing development in floodplains to reduce damages associated with flooding. The public interest is

advanced through this proposal because the amendments have been identified as necessary for Bellevue's continued participation in the NFIP.

VII. RECOMMENDATION

Recommend the FEMA Consistency Code amendment as drafted in Attachment A and transmit the ordinance on to the City Council for final approval.

ATTACHMENTS

- A. Draft Revised FEMA Consistency Amendment Ordinance.
- B. Final DNS published on May 13, 2010.
- C. Illustration of the Floodplain and Floodway

Attachment A
Proposed Amendments to Floodplain Management
LUC 20.25H Section IX
Areas of Special Flood Hazard

IX. AREAS OF SPECIAL FLOOD HAZARD

20.25H.175 Designation of critical area.

A. Designation of Critical Area.

Areas of special flood hazard shall include:

1. Land Subject to One-Hundred-Year Flood. The land in the floodplain subject to the flood having a one percent chance or greater of being equaled or exceeded in any given year as determined by customary methods of statistical analysis defined in the City of Bellevue Storm and Surface Water Engineering Standards, January 2011, or as hereafter amended Utility Code, Chapter 24.06-BCC. Also referred to as the 100-year flood.

Comment [cd1]: Cross reference correction

2. Areas Identified on the Flood Insurance Rate Map(s). Those areas identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for BellevueKing County" dated ~~December 1978~~ April 19 2005, with an accompanying flood insurance map(s) and any revisions thereto. The Flood Insurance Study and accompanying map(s) are hereby adopted by reference, declared part of this part, and are available for public review at the City of Bellevue.

Comment [cd2]: Cross reference correction

....

20.25H.177 Definitions.

For purposes of the regulations for the area of special flood hazard, the following definitions apply:

"Base flood elevation (BFE)" means the flood having a one percent chance of being equaled or exceeded in any given year as determined by customary methods of statistical analysis defined in the Utility Code, Chapter 24.06 BCC. Also referred to as the 100-year flood.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Development" means any man-made change to improved or unimproved real estate in the Regulatory Floodplain, including but not limited to building or other structures.

Comment [cd3]: FEMA directed amendment for Bellevue residents to remain insurance eligible

mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Encroachment” means any alteration or development within the regulatory floodway that would result in any increase in the flood levels during the occurrence of the base flood discharge.

Comment [cd4]: FEMA directed amendment for Bellevue residents to remain insurance eligible.

....

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate of improved real property, water and sanitary facilities, structures and their contents.

“Floodway” means the channel of a river or stream and overbank areas adjacent to the channel. The floodway carries the bulk of floodwater downstream and is usually the area where water velocities and forces are the greatest and most destructive. The floodway and the adjacent land areas must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Comment [cd5]: FEMA directed amendment for Bellevue residents to remain insurance eligible. WAC 173-15-070.

....

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this part found in LUC 20.25H.180.D.1.a.

Comment [cd6]: Clarify cross reference.

....

“Regulatory Floodway” means the floodway delineated on the flood insurance rate map (FIRM).

Comment [cd7]: FEMA directed amendment for Bellevue residents to remain insurance eligible.

....

“Substantial Damage” means damage of any origin sustained by a structure where the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Comment [cd8]: Required for proposed condition 20.25H.180.C.5 that provides mechanism to determine if residential structures in floodway may be replaced.

“Substantial improvement” includes the following: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the replacement market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged, and is being restored, before the damage occurred. For the purpose of this definition, “substantial improvement” is

Comment [cd9]: FEMA directed amendment for Bellevue residents to remain insurance eligible.

considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places.

20.25H.180 Development in the area of special flood hazard.

No use, development or activity may occur in an area of special flood hazard except as specifically allowed by this part. All use, development or activity which is allowed is subject to the performance standards of this subsection and shall not result in a rise in the BFE. The requirements of this section may not be modified through a critical areas report.

....

C. General Performance Standards.

Where use or development is allowed pursuant to LUC 20.25H.055, the following general performance standards apply.

1. Intrusion Over the Area of Special Flood Hazard Allowed. Any structure may intrude over the area of special flood hazard if:

a. The intrusion is located above existing grade, and does not alter the configuration of the area of special flood hazard; ~~and~~

b. The intrusion is at an elevation and orientation which maintains the existing vegetation of the area of special flood hazard in a healthy condition. Solar access to vegetation must be maintained at least 50 percent of daylight hours during the normal growing season; and

c. The intrusion does not encroach into the regulated floodway except in compliance with 20.25H.180.C.5.

Comment [cd10]: Consistency with FEMA-directed code amendments.

Development not meeting the requirements of this subsection C.1 may be allowed pursuant to LUC 20.25H.055 and only in accordance with the requirements set forth in the remainder of this section C.

2. Elevation Certificate Following Construction. Following construction of a structure within the area of special flood hazard, where the base flood elevation is provided, the applicant shall obtain an elevation certificate. The elevation certificate shall be completed by a surveyor ~~or engineer~~ licensed in the state of Washington and shall be submitted to City of Bellevue, Utilities Department. ~~The Director of Planning and Community Development shall obtain and transmit to the Director of the Utilities Department the elevation in relation to City of Bellevue vertical datum (NAVD 88) of the~~

Comment [cd11]: Cross reference correction.

lowest floor, including basement, and attendant utilities of a new or substantially improved structure permitted by this part. All records shall be maintained for public inspection in accordance with 44 C.F.R 60.3(b)(5)(iii) and the City of Bellevue record retention policy.

Comment [cd12]: FEMA directed amendment for Bellevue residents to remain insurance eligible. 40 C.F.R. 60.3(b)(5)(iii).

3. Construction Materials and Methods.

a. **Site Design.** All structures, utilities, and other improvements shall be located on the buildable portion of the site out of the area of special flood hazard unless there is no buildable site out of the area of special flood hazard. For sites with no buildable area out of the area of special flood hazard, structures, utilities, and other improvements shall be placed on the highest land on the site, oriented parallel to flow rather than perpendicular, and sited as far from the stream and other critical areas as possible. Located in flood-fringe where flood flow velocities are less than three feet per second and flood depths are less than three feet. If the Director detects any evidence of active hyporheic exchange on a site, the development shall be located to minimize disruption of such exchange.

b. **Methods that Minimize Flood Damage.** All new construction and substantial improvements shall be constructed using flood-resistant materials and using methods and practices that minimize flood damage.

c. **Utility Protection.** Electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

d. **Anchoring.** All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

4. No Rise in the Base Flood Elevation (BFE). Any allowed use or development shall not result in a rise in the BFE.

a. **Post and Pile.** Post and piling techniques are preferred and are presumed to produce no increase in the BFE. Demonstration of no net rise in the BFE through calculation is not required.

b. **Compensatory Storage.** Proposals using compensatory storage techniques to assure no rise in the BFE shall demonstrate no net rise in the BFE through the calculation by methods established in the Utilities Engineering Standards, Section D4-04.5, Flood Plain/Floodway Analysis.

5. Development in the Regulatory Floodway.

a. Encroachment into Regulatory Floodway Prohibited. Encroachments, including, but not limited to, fill, new construction, substantial improvements, and other

Comment [cd13]: FEMA directed amendment for Bellevue residents to remain insurance eligible. (44 C.F.R. 60.3(d)(3)).

development is prohibited, unless a registered professional engineer certifies that the proposed encroachment into the regulatory floodway shall not result in any rise in the BFE using hydrological and hydraulic analysis performed in accordance with City of Bellevue Storm and Surface Water Engineering Standards, January 2011, or as hereafter amended. All new construction and substantial improvements shall comply with this section 20.25H.180.

b. Residential Structures. A residential structure located partially within the regulatory floodway will be considered as totally within the regulated floodplain and must comply with this paragraph C.5. This paragraph does not apply to structures identified as historical places. Construction or reconstruction of residential structures is prohibited within the regulatory floodway, except when:

Comment [j14]: FEMA directed amendment for Bellevue residents to remain insurance eligible. WAC 173-158-070.

- i. Repairs, reconstruction, or improvements to a structure that do not increase the footprint; and
- ii. Repairs, reconstruction, or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either (1) before the repair, reconstruction, or improvement is begun, or (2) if the structure has been damaged, and is being restored, before the damage occurred. -Work done to comply with state or local health, sanitary, or safety codes identified by the Building Official and which are the minimum necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places shall not be included in the 50 percent market value determination.

c. Substantially Damaged Residential Structures.

Comment [cd15]: Provided process to replace substantially damaged residential structures in the regulatory floodway. WAC 173-158-076.

- i. The Director may request the Washington State Department of Ecology assess the risk of harm to life and property posed by the specific conditions of the regulated floodway, and provide the City with a recommendation on repair or replacement of a substantially damaged residential structure consistent with WAC 173-158-056, now or as hereafter amended. Property owners shall be responsible for submitting to the City any information necessary to complete the assessment when such information is not otherwise available. No repair or replacement of a substantially damaged residential structure located in the regulatory floodway is allowed without a recommendation from the Department of Ecology.
- ii. Before the repair, replacement, or reconstruction is started, all requirements of this section 20.25H.180 must be satisfied. In addition, the following conditions shall be met:

(1) There is no potential safe building location for the replacement residential structure on the same property outside the regulatory floodway;

(2) A replacement residential structure is a residential structure built as a substitute for a previously existing residential structure of equivalent use and size;

(3) Repairs or reconstruction or replacement of a residential structure shall not increase the total square footage of floodway encroachment;

(4) The elevation of the lowest floor of the substantially damaged or replacement residential structure is a minimum of one foot higher than the base flood elevation;

(5) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood water into the system;

(6) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and

(7) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

56. Modification of Stream Channel. Alteration of open stream channels shall be avoided, if feasible. If unavoidable, the following provisions shall apply to the alteration:

- a. Modifications shall only be allowed in accordance with the habitat improvement projects.
- b. Modification projects shall not result in blockage of side channels.
- c. The City of Bellevue shall notify adjacent communities, the state departments of Ecology and Fish and Wildlife, and the Federal Insurance Administration about the proposed modification at least 30 days prior to permit issuance.
- d. The applicant shall maintain the altered or relocated portion of the stream channel to ensure that the flood-carrying capacity is not diminished. Maintenance shall be bonded for a period of five years, and be in accordance with an approved maintenance program.

67. Compensatory Storage. Development proposals must not reduce the effective base flood storage volume of the area of special flood hazard. Grading or other activity that would reduce the effective storage volume must be mitigated by creating compensatory storage on the site. The compensatory storage must:

- a. Provide equivalent elevations to that being displaced;
- b. Be hydraulically connected to the source of flooding;
- c. Be provided in the same construction season and before the flood season begins on September 30th;
- d. Occur on-site or off-site if legal arrangements can be made to assure that the effective compensatory storage volume will be preserved over time;
- e. Be supported by a detailed hydraulic analysis that:
 - i. Is prepared by a licensed engineer;
 - ii. Demonstrates that the proposed compensatory storage does not adversely affect the BFE; and
- f. Meet all other critical areas rules subject to this part. If modification to a critical area or critical area buffer is required to complete the compensatory storage requirement, such modification shall be mitigated pursuant to an approved mitigation and restoration plan, LUC 20.25H.210.

D. Specific Performance Standards

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7. Reasonable Use Exception. Where a reasonable use exception is granted under LUC 20.25H.190, the following performance standards apply:

- a. Residential Construction (Single-Family and Multifamily Dwellings).
 - i. Must Be Above Base Flood Elevation. New construction of any residential structure shall have the lowest floor, including basement and attendant utilities, elevated one foot or more above the base flood elevation.
 - ii. Enclosed areas (including breakaway walls) below the BFE shall be no larger than 300 square feet.
 - iii. Must comply with the requirements for openings set forth in LUC 20.25H.180.D.1.a.

Comment [cd16]: FEMA directed amendment for Bellevue residents to remain insurance eligible.

ATTACHMENT B



DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL COORDINATOR
450 110th Ave NE., P.O. BOX 90012
BELLEVUE, WA 98009-9012

DETERMINATION OF NON-SIGNIFICANCE

PROPONENT: City of Bellevue Development Services Department

LOCATION OF PROPOSAL: City-wide

DESCRIPTION OF PROPOSAL: The proposal amends LUC 20.25H, Section IX for consistency with certain state and federally required floodplain management regulations as required for the City's participation in FEMA's National Flood Insurance Program.

FILE NUMBER: 10-106986 AD, Special Flood Hazard Areas for Consistency with FEMA

The Environmental Coordinator of the City of Bellevue has determined that this proposal does not have a probable significant adverse impact upon the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(C). This decision was made after the Bellevue Environmental Coordinator reviewed the completed environmental checklist and information filed with Land Use Division. This information is available to the public on request.

- This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.
- This DNS is issued under WAC 197-11-340(2) and is subject to a 14-day comment period from the date below. Comments must be submitted by 5 p.m. on _____.

This DNS may be withdrawn at any time if the proposal is modified so that it is likely to have significant adverse environmental impacts; if there is significant new information indicating, or on, a proposals probable significant adverse environmental impacts (unless a non-exempt license has been issued if the proposal is a private project), or if the DNS was procured by misrepresentation or lack of material disclosure.

This DNS is only appealable as part of the City's action on the amendment to the Land Use Code. In order to comply with requirements of SEPA and the State of Washington Growth Management Act for coordination of hearings, any appeal of the SEPA threshold determination herein will be considered by the Growth Management Hearings Board along with an appeal of the City Council's action. See LUC 20.35.250C.

Carol Utterlund
Environmental Coordinator

May 13, 2010
Date

OTHERS TO RECEIVE THIS DOCUMENT:

State Department of Fish and Wildlife
U.S. Army Corps of Engineers
Attorney General
King County
Muckleshoot Indian Tribe

M. Jackson
5/4/10

**CITY OF BELLEVUE
ENVIRONMENTAL CHECKLIST
(Integrated SEPA/GMA Process)**

A. BACKGROUND INFORMATION

PROPOSAL TITLE: Amend the Bellevue Land Use Code (LUC), Chapter 20.25H, Section IX for consistency with certain state and federally-required floodplain management regulations as required for the City's participation in FEMA's National Flood Insurance Program. (File No. 10-106986-AD).

PROPERTY OWNERS' NAME: N/A; applies City-wide

PROPOSAL LOCATION: Applies City-wide

PROPONENT'S NAME: City of Bellevue

CONTACT PERSON'S NAME: Catherine A. Drews, Legal Planner

CONTACT PERSON'S ADDRESS: Development Services Department
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012

CONTACT PERSON'S PHONE: 425-452-6134

BRIEF DESCRIPTION OF THE PROPOSAL'S SCOPE AND NATURE:

1. **General description:** The proposal is to amend the Bellevue Land Use Code (LUC), Chapter 20.25H, Section IX for consistency with certain state and federally-required floodplain management regulations as required for the City's participation in FEMA's National Flood Insurance Program. The proposal includes changes to definitions, references to FEMA flood insurance rate maps, and general performance standards. FEMA's rules detailing the minimum requirements for floodplain management are codified at 40 C.F.R. Part 60. The Washington State Department of Ecology's floodplain management laws are codified at Chapter 86.16 RCW.
2. **Site acreage:** Applies City-wide
3. **Number of dwelling units/buildings to be demolished:** N/A
4. **Number of dwelling units/buildings to be constructed:** N/A
5. **Square footage of buildings to be demolished:** N/A

6. **Square footage of buildings to be constructed:** N/A

7. **Quantity of earth movement (in cubic yards):** N/A

8. **Proposed land use:** The proposal is to amend the City's Areas of Special Flood Hazard regulations for consistency with certain state and federally-required floodplain management regulations as required for the City's participation in FEMA's National Flood Insurance Program. The proposal includes changes to definitions, references to FEMA flood insurance rate maps, and general performance standards.

LUC 20.25H Section IX

9. **Design features, including building height, number of stories and proposed exterior materials:** N/A

10. **Other:** N/A

Proposed timing or schedule (including phasing, if applicable):

A public hearing on the proposal is anticipated in May of 2010. City Council final action on the proposal will follow that public hearing.

Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

Yes. There is a possibility that additional code amendments will be necessary to address requirements arising from the National Marine Fisheries Service's (NMFS) 2008 Biological Opinion (BiOp), which found the National Flood Insurance Program jeopardizes endangered Puget Sound Chinook salmon and southern resident orca whales. Until FEMA issues its final Model Ordinance for floodplain management, however, it is premature to speculate if additional code amendments may be required.

List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

SEPA checklist and threshold determination for this proposed Land Use Code amendment.

Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. List dates applied for and file numbers, if known.

N/A

List any government approvals or permits that will be needed for your proposal, if known. If permits have been applied for, list application date and file numbers, if known.

Ordinance adoption by the City Council.

B. Environmental Elements

No discussion of the individual Environmental Elements is required for GMA actions per WAC 197-11-235.3.b.

C. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (do not use this sheet for project actions)

SUMMARY

Project Summary: The proposal is to amend the Bellevue Land Use Code (LUC), Chapter 20.25H, Section IX for consistency with certain state and federally-required floodplain management regulations as required for the City's participation in FEMA's National Flood Insurance Program. The proposal includes changes to definitions, references to FEMA flood insurance rate maps, and general performance standards.

Environmental Summary per WAC 197-11-235(3)(b):

State the proposal's objectives: The object of the proposal is to address minor inconsistencies between FEMA's floodplain management regulations and the City's floodplain management regulations. Consistency is necessary because the City participates in FEMA's National Flood Insurance Program.

Specify the purpose and need to which the proposal is responding: The proposal is to amend the Bellevue Land Use Code (LUC), Chapter 20.25H, Section IX for consistency with certain state and federally-required floodplain management regulations as required for the City's participation in FEMA's National Flood Insurance Program. The proposal includes changes to definitions, references to FEMA flood insurance rate maps, and general performance standards. The amendments are necessary to meet federally-mandated program requirements.

State the major conclusions, significant areas of controversy and uncertainty: Little controversy exists related to this proposal.

State the issues to be resolved, including the environmental choices to be made among alternative courses of action: No issues to be resolved. Alternative courses of action include: (1) not amending the LUC for consistency the federal regulations or (2) waiting until FEMA finalizes its new Model Ordinance in response to the NMFs's BiOp. Staff recommends moving forward with the amendment to ensure consistency, because it is unknown when FEMA will issue its final model ordinance and if the City will again need to amend its floodplain management regulations in response to the final ordinance.

State the impacts of the proposal, including any significant adverse impacts that cannot be mitigated: The proposal is a nonproject action to amend the LUC for consistency with federal floodplain management regulations. There are no significant adverse impacts resulting from that action. Any specific proposal to develop in floodplains would require project level review.

Describe any proposed mitigation measures and their effectiveness: No specific development is being approved with this proposal. No significant environmental impacts have been identified, therefore no mitigation measures are proposed.

1. **How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**

The proposed code amendment will not increase the potential impacts to water, air and earth resources or noise production.

Proposed measures to avoid or reduce such increases are: N/A

2. **How would the proposal be likely to affect plants, animals, fish or marine life?**

The proposed code amendment will not increase the potential impacts to plants and animals.

Proposed measures to protect or conserve plants, animals, fish or marine life are: N/A

3. **How would the proposal be likely to deplete energy or natural resources?**

No adverse impacts to energy or natural resources are anticipated.

Proposed measures to project or conserve energy and natural resources are: N/A

4. **How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

The proposal indirectly affects development or redevelopment of floodplains through regulation of these of activities

Proposed measures to protect such resources or to avoid or reduce impacts are: N/A

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The proposal will not affect any shoreline areas. The same shoreline overlay regulations will continue to apply to development and redevelopment.

Proposed measures to avoid or reduce shoreline and land use impacts are: N/A

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

None of the proposed amendments to the Land Use Code are likely to change the demands on the transportation system.

Proposed measures to reduce or respond to such demand(s) are: N/A

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

No conflicts are known or anticipated.

- D. The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

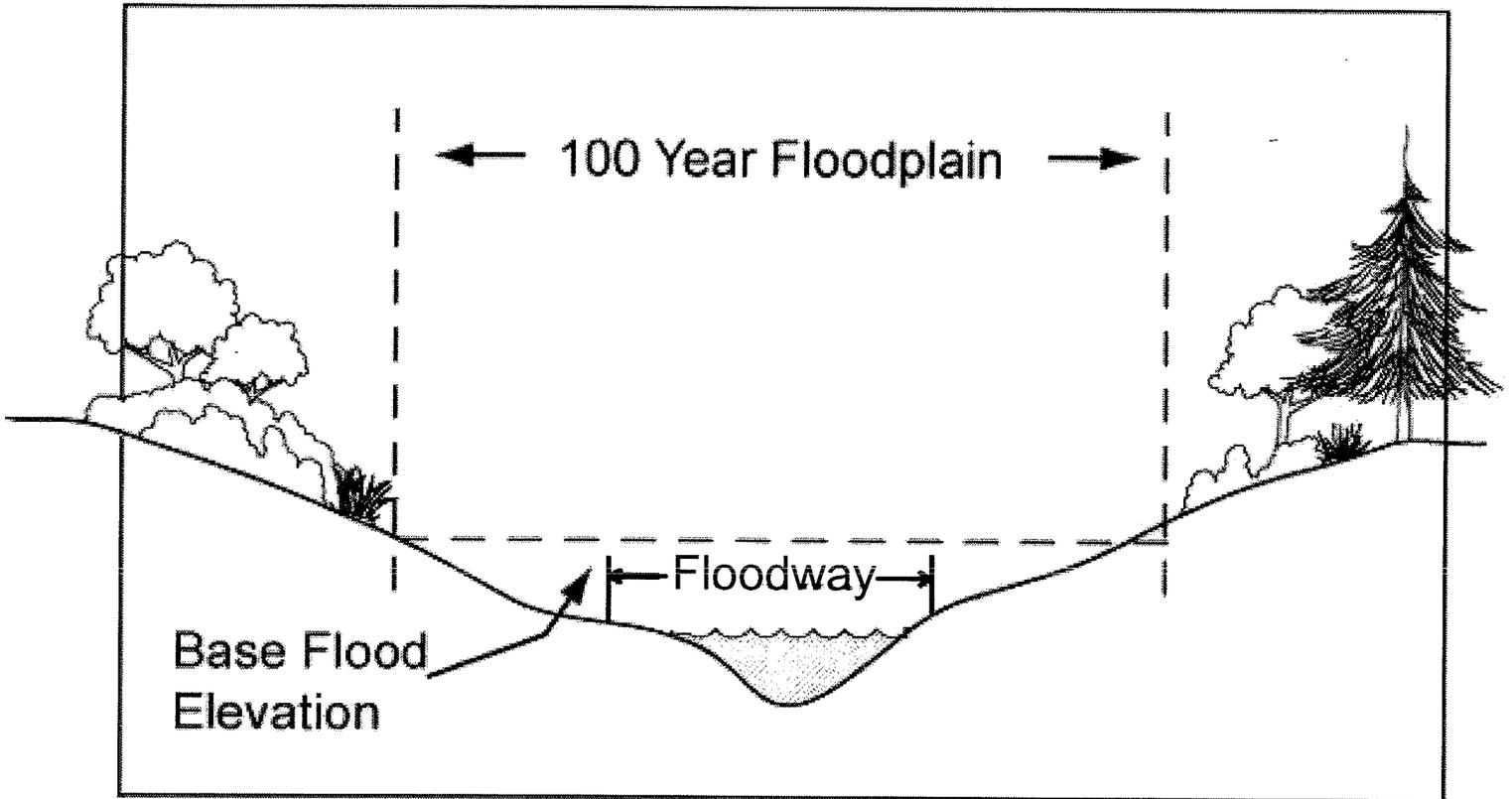
Signature

Catherine A. Dreyer

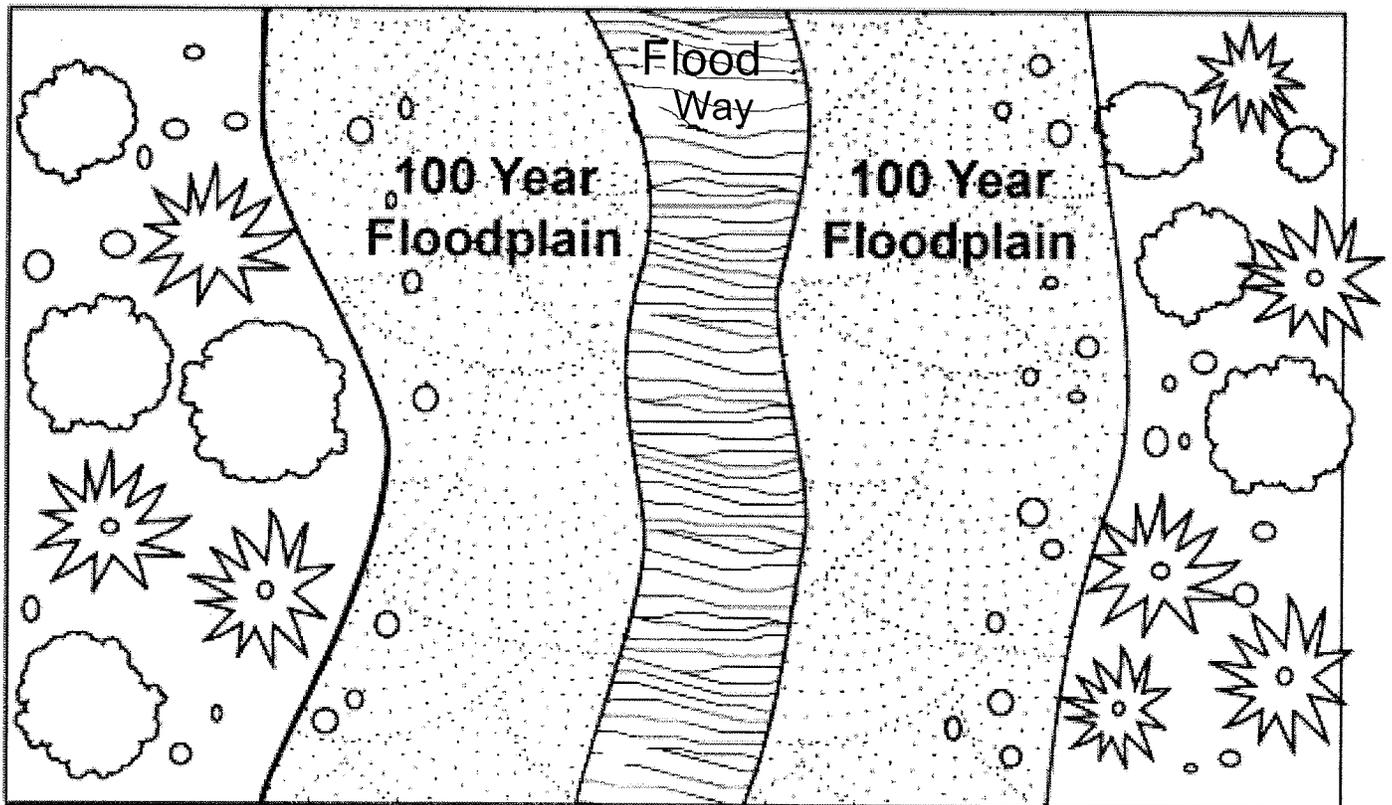
Date Submitted

4/19/2020

ATTACHMENT C



Section View



Plan View

ATTACHMENT B

Drews, Catherine

From: Anita Skoog [askoog@gvakm.com]
Sent: Friday, June 11, 2010 2:37 PM
To: Drews, Catherine
Subject: RE: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

Catherine –

Sorry for my delay in responding. Too many issues going on at the same time.

We took a closer look at the amendment and see that at this point, it appears to be a clerical fix. We know that the substantive issues still need to be addressed in the SMP update process, and as you know we are just in the initial stages of responding to the Draft SMP.

Thank you for your timely response.

Anita

From: CDrews@bellevuewa.gov [mailto:CDrews@bellevuewa.gov]
Sent: Friday, May 28, 2010 4:59 PM
To: Anita Skoog
Subject: RE: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

Dear Ms. Skoog:

Thank you for your email dated May 27, 2010, addressing the FEMA Consistency Land Use Code Update. Mr. Parks raised the issues both mentioned and appended to your email during the public hearing Wednesday night before the Planning Commission. As discussed in the Staff Report and at Wednesday's public hearing, the City participates in FEMA's National Flood Insurance Program. This program provides reasonably-priced flood insurance to Bellevue residents. To participate in the program, the City must ensure that its floodplain management regulations are consistent with FEMA's floodplain regulations as detailed in the Code of Federal Regulations, at 40 C.F.R Part 60. FEMA's floodplain regulations are intended to protect the public health, safety and welfare of the community by protecting structures from the 100-year flood. The City must also comply with state floodplain management regulations.

These proposed amendments, which include updating technical and date references, correcting cross-references, harmonizing definitions, and eliminating engineers as accepted professionals who may prepare flood elevation certificates, harmonize the City's regulations with FEMA and the state floodplain regulations. This is necessary for continued participation in the National Flood Insurance Program.

As for the timing of these amendments, the City received notice from Ecology regarding code inconsistencies on April 1, 2009 and placed on our work program upon receipt. Because of staff workload demands, the code amendments could not be processed until now. This work also needs to be completed by June 24, 2010, because the Washington State Department of Ecology is performing a Community Assistance Visit on that date to discuss Bellevue's participation in the National Flood Insurance Program.

Please feel free to contact me with any questions you may have.

Catherine A. Drews

Catherine A. Drews
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From: Anita Skoog [mailto:askoog@gvakm.com]
Sent: Thursday, May 27, 2010 11:58 AM
To: Drews, Catherine; Inghram, Paul
Subject: RE: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

Paul and Catherine –

Thank you for your email this morning.

While I personally may not have corresponded with Mathews Jackson further on the FEMA Floodplains issues, WSSA has had a lot of dialogue on the issue since it was announced in the May 13th Permit Bulletin.

We do not feel that the Code Amendment is “minor in nature” as Mr. Jackson characterized it in his email of May 14th. It is a significant issue for residents potentially affected by it’s ramifications.

As you know, one of our WSSA Board members, Brian Parks, addresses the Planning Commission last night and requested the Commissions “table” the FEMA Code Amendment until we’ve processed the SMP.

We feel this Code amendment being proposed while we are in the middle of the SMP process is extremely inappropriate, and appears to be a “backdoor” measure.

Please explain the appropriateness of this action.

Thank you,
Anita Skoog Neil

P.S. Brian’s speech is copied below.

From: Brian Parks [mailto:brian@parkscreative.com]
Sent: Wednesday, May 26, 2010 7:53 PM
Subject: Re: Bellevue Floodplains Critical Areas

Brian Park’s Speech to Planning Commission (May 26, 2010):

At the last PC meeting 2 wks ago, Mr. Raine stated "the shoreline won't be called critical area again", yet in tonight's FEMA Land Use Code Amendment, 20.25H.175 Designation of critical area, reads:

A. Designation of Critical Area.

Areas of special flood hazard shall include:

1. Land Subject to One-Hundred-Year Flood.
2. Areas Identified on the Flood Insurance Rate Map(s). (This refers to the FEMA Federal Insurance Rate Map or FIRM.

Is this REQUIRED, or DESIRED?

Now on Phantom lake, FEMA maps show 261 NGVD/ 265 NAVD Elevation as floodplain, which is 4ft above surface elevation last few weeks. That is about 220 feet from my shoreline and would put much of Lake Hills under water. I know it was established years ago but in reality is an unrealistic number and needs revision!

Bringing up this issue up in the middle of the SMP process shows a lack of professionalism at the least. Timing seems suspicious: SMP Draft "POLICY SH-130. Preserve and maintain 100-year floodplains in a natural and undeveloped state, and restore conditions that have become degraded". It only serves to confound the SMP process and should be tabled for that reason only.

Local news articles have demonstrated serious concern in the region with the process and how it's being carried out. It is not simply a group of lakeside residents who question what is being pushed through. While Bellevue may not have the same issues as all of these other jurisdictions, factual issues raised by them would be prudent to review before proceeding.

http://seattletimes.nwsourc.com/html/localnews/2011285355_floodmaps08m.html?syndication=rss

The most affected lakeshores in Bellevue would be Sammamish and Phantom. Samm and Phantom water levels can be controlled, but have not. Failing to do so, promoting higher water levels, with resulting erosion and loss of shoreline vegetation, can be argued to be a form of a taking.

The Judge Zilly decision noted the ESA-salmon issue as the driving need for restricting development on shorelines, our expert Gil Pauley, explained Lake Samm shorelines do not supply salmon habitat, and Phantom Lk does not support salmon habitat.

My final reason to ask that the issue be tabled is that there is a mention in the staff report that the City has several code provisions that go beyond the federal requirements. Does the Commission understand what these are and why Bellevue needs to exceed the federal level? We would like more information, at the very least.

These proposed amendments are premature and the WSSA suggests you "table it" for now. A round-table conversation about SMP Draft between Commissioners, WSSA and Staff might be in order first.

Brian Parks

16011 SE 16th Street

Bellevue WA 98008

(425) 562 0816

From: CDrews@bellevuewa.gov [mailto:CDrews@bellevuewa.gov]
Sent: Thursday, May 27, 2010 10:06 AM
To: PInghram@bellevuewa.gov
Cc: Anita Skoog
Subject: FW: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

Paul

Matthews forwarded this email to me regarding the FEMA code amendments. I thought the Planning Commission would like a copy for its file in addition to the copy in the code amendment file. We did not receive any subsequent correspondence from Ms. Skoog on this matter.

Please let me know if you have any questions-

Catherine

From: Jackson, Matthews
Sent: Monday, May 17, 2010 7:29 AM
To: Drews, Catherine
Subject: FW: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

fyi

Matthews Jackson
Neighborhood Development Planning Manager
Development Services Department
City of Bellevue
Phone: 425-452-2729
email: mjackson@bellevuewa.gov
Internet: www.bellevuewa.gov

From: Anita Skoog [mailto:askoog@gvakm.com]
Sent: Friday, May 14, 2010 5:30 PM
To: Jackson, Matthews
Subject: RE: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

Thank you.

From: MJackson@bellevuewa.gov [mailto:MJackson@bellevuewa.gov]
Sent: Friday, May 14, 2010 5:13 PM
To: Anita Skoog
Subject: RE: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

The proposed changes are very minor in nature. Please see the attached documents for your reference. Let me know if you have any questions.

Matthews Jackson

Neighborhood Development Planning Manager
Development Services Department

City of Bellevue

Phone: 425-452-2729

email: mjackson@bellevuewa.gov

Internet: www.bellevuewa.gov

From: Anita Skoog [<mailto:askoog@gvakm.com>]

Sent: Friday, May 14, 2010 2:35 PM

To: Jackson, Matthews

Subject: FEMA Consistency Code Amendment -City of Bellevue - pg 2 of 5-13-10 Permit Bulletin

Matthews –

Please explain what the significance is of the FEMA Code Amendment , per the pg 2 of the attached Permit Bulletin?

Thanks,
Anita Skoog

From: City of Bellevue [<mailto:bellevuewa@govdelivery.com>]

Sent: Thursday, May 13, 2010 4:17 PM

To: Anita Skoog

Subject: City of Bellevue Weekly Permit Bulletin 5-13-10

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