



CITY OF MERCER ISLAND CITY COUNCIL MEETING AGENDA

Tuesday,
May 22, 2018
5:00 PM

Mayor Debbie Bertlin
Deputy Mayor Salim Nice
Councilmembers Tom Acker, Bruce Bassett,
Wendy Weiker, David Wisenteiner, and Benson Wong

Contact: 206.275.7793, council@mercergov.org
www.mercergov.org/council

This meeting will be held in the City Hall Council Chambers
at 9611 SE 36th Street, Mercer Island, WA.

In compliance with the Americans with Disabilities Act, those requiring
accommodation for Council meetings should notify the City Clerk's Office
at least 24 hours prior to the meeting at 206.275.7793.

SPECIAL MEETING

EXECUTIVE SESSION, 5:00 PM

Executive Session to discuss with legal counsel, pending or potential litigation pursuant to RCW 42.30.110(1)(I) for approximately 30 minutes

JOINT MEETING WITH PLANNING COMMISSION

CALL TO ORDER & ROLL CALL, 5:30 PM

SPECIAL BUSINESS

AB 5428: Critical Areas Code and Shoreline Master Program Update: Introduction Legislative Requirements,
Proposed Approach

ADJOURNMENT



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA**

**AB 5428
May 22, 2018
Special Business**

CRITICAL AREAS CODE AND SHORELINE MASTER PROGRAM UPDATE: INTRODUCTION TO LEGISLATIVE REQUIREMENTS, PROPOSED APPROACH	Action: Receive presentation and discuss decision-making approach with the Planning Commission.	<input checked="" type="checkbox"/> Discussion Only <input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
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DEPARTMENT OF	Development Services Group (Evan Maxim)
COUNCIL LIAISON	n/a
EXHIBITS	<ol style="list-style-type: none"> 1. Consultant Biographies + Presentation Outline 2. Draft Decision-Making Tool 3. Project Timeline 4. Public Participation Plan
2018-2019 CITY COUNCIL GOAL	6. Update Outdated Codes, Policies and Practices
APPROVED BY CITY MANAGER	

AMOUNT OF EXPENDITURE	\$	n/a
AMOUNT BUDGETED	\$	n/a
APPROPRIATION REQUIRED	\$	n/a

SUMMARY

In February of 2018, the City Council approved the proposed scope of work for an update to: 1) the Critical Areas Code (CAO), and 2) the Shoreline Master Program (SMP). Following approval of the scope of work, the City staff and Planning Commission have reviewed the regulatory context of the CAO and SMP update and have retained a consultant to assist in the preparation of technical material to inform the update. The May 22, 2018 meeting is designed to: A) provide for an introduction to the regulatory requirements associated with the CAO and SMP update; and B) allow for open communication between the City Council and the Planning Commission on the proposed approach to developing a Planning Commission recommendation on amendments to the CAO and SMP regulations.

The CAO contains regulations for those areas designated as critical areas, which include wetlands, watercourses, and geologically hazardous areas. The Shoreline Master Program contains regulations pertaining to the shoreline jurisdiction, which on Mercer Island encompasses lands within 200 feet of the shoreline of Lake Washington. Both codes are required by state law to be updated periodically, at least every 8 years. The CAO was last updated in 2005 and the SMP was last updated in 2015.

At the May 22, 2018 joint meeting of the Planning Commission and City Council, staff and the project consultant will provide a briefing on applicable state laws and background technical information on critical areas. Staff will also share some initial thoughts on strategies for approaching code development for this project and invite the Planning Commission and City Council's initial feedback.

Legislative Context

Staff will introduce the project consultant, ESA (Exhibit 1), who will provide background information on the Growth Management Act (chapter 36.70A RCW) and Shoreline Management Act (chapter 90.58 RCW). These statutes provide the impetus for these code updates and set certain requirements for each. ESA will also provide foundational information about the different types of critical areas found on Mercer Island, including how they are identified, and why they are regulated.

Draft Decision-Making Tool

The Planning Commission and staff will introduce a draft decision-making tool developed to aid the code review process (Exhibit 2). This tool was created to organize the various informational inputs that go into code updates, including technical scientific information, comprehensive plan policies, and public input. The tool was developed with the Planning Commission to provide a way to organize these informational inputs and display code options side-by-side in an effort to provide a shared basis for developing code recommendations. It includes an evaluation of items required by state law, as well as decision-making criteria identified by the Planning Commission, and aims to provide transparency to the process by showing the analysis behind the Planning Commission’s recommendations.

The decision-making tool can assist in the decision-making process by first checking for consistency with the requirements in state law, and second by providing a systematic format for rating the relative positive or negative effect of a potential code standard. The first set of “Gatekeeper Questions” check for consistency with legislative requirements for the inclusion of the best available science, the City’s Comprehensive Plan policies, and case law. The Decision-Making Factors are then rated on a qualitative scale ranging from strongly positive to strongly negative, with the reasons for the rating listed in each square of the matrix. By systematically reviewing potential code options, the tool can reveal which options provide the strongest positive result, as well as where there are opportunities to adjust the code options to better meet the criteria.

Project Timeline

An anticipated project timeline (Exhibit 3), including major milestones and the expected adoption date, is attached for the Planning Commission and City Council’s review.

Public Participation Plan

Staff have drafted a Public Participation Plan (Exhibit 4) for use during the CAO and SMP updates. The scope is similar in scale and methods to the Residential Development Standards community engagement, with some refinements made based on feedback received on that process.

RECOMMENDATION

Planning Manager

No action required. Receive presentation and discuss decision-making approach with the Planning Commission.



ESA has helped numerous cities and counties update their CAOs, and we have developed many concise Best Available Science (BAS) reports and CAO consistency analyses. Our update efforts are always focused on improving standards to meet community objectives, and we offer support to both local adoption and implementation phases of the update process. Our team of scientists and planners are skilled communicators and understand the issues that are pertinent to Mercer Island and have a detailed knowledge of the City's CAO and implementation challenges through ongoing third party review work. Our teaming partner, Aspect Consulting, also knows the landscape and will provide technical and policy support for geologically hazardous areas. We look forward to meeting the City Council and Planning Commission to introduce our team's project manager (Aaron Booy) and lead critical areas scientist (Jessica Redman) who will provide an overview of critical areas and the critical areas update process. A short summary of key staff qualifications is provided below.

Aaron Booy, CFM – Project Manager

Aaron has 12 years of experience in aquatic ecology and environmental planning. His knowledge of environmental regulations and local implementation has contributed to a wide range of shoreline management plans, critical areas standards updates, and community land use planning efforts. He is an excellent technical writer, authoring a full range of scientific and regulatory compliance documents including BAS reviews, and is experienced facilitating and presenting to varied audiences. He has managed ESA's support of CAO updates for Duvall, Edmonds, North Bend, and Lynnwood, and provided BAS interpretation and policy direction for Renton, Snoqualmie, and other Puget Sound jurisdictions. Aaron is skilled in natural resource management and the use of science in developing environmental and land use policies.

Teresa Vanderburg, PWS – Project Director

Teresa has 28 years of professional experience in natural resource management, wetlands and scientific analyses. She is a Professional Wetland Scientist (PWS) and Vice President of the firm. She has reviewed and/or performed hundreds of wetland delineations, functional assessments and wetland mitigation projects. Teresa's expertise includes developing CAOs using BAS for Edgewood, Federal Way, Gig Harbor, Tukwila, Kent, Burien, Kenmore, and Tacoma. She has served as a scientific expert witness in hearings, trials, and other legal proceedings. Teresa also serves as a senior advisor for students in the University of Washington Wetlands Management Certificate program.

Jessica Redman – Deputy Project Manager and Critical Areas Scientist

Jessica is an ecologist with expertise in both marine and freshwater systems, wetland sciences, and permitting. Her experience includes biological and regulatory monitoring, intensive fieldwork efforts, species identification, and other data collection. Jessica is currently assisting City of Oak Harbor with its CAO update related to wetland buffer issues. She understands local, state, and federal environmental law and permitting practices and brings experience in watershed characterization, impact assessments, mitigation planning, and mitigation monitoring. She is a skilled technical writer and regularly authors NEPA/SEPA compliance documents, Critical Area Studies, and other local, state and national environmental documentation.

Dave McCormack, LEG, LHG – Geohazards Specialist (Aspect Consulting)

Dave is an engineering geologist and hydrogeologist with intrinsic knowledge of western Washington geology. His evaluations skillfully characterize soil data to inform focused slope stability assessments and modeling tasks. A large proportion of his projects have included review of shoreline and coastal bluff geology and geomorphic processes. These studies were used to assess short and long-term hazards to the environment and structures, and to develop setbacks and engineering solutions that were protective of the natural environment and life safety. Dave is also highly adept at translating his technical analyses and conclusions into easily understandable deliverables and communicating with the public.

What are Critical Areas in Mercer Island?

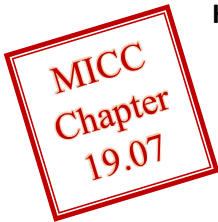
- Geologically hazardous areas
 - Landslide, erosion, seismic hazards
- Watercourses
- Wildlife Habitat Conservation Areas
 - Habitat for listed and sensitive fish and wildlife species
- Wetlands
- Critical aquifer recharge areas (CARAs)



Lake Washington shoreline and associated wetlands

How does the City protect Critical Areas?

- Prohibiting, limiting, and/or allowing certain activities
- Requiring buffers or setbacks around sensitive areas
- Requiring step-wise approach (i.e., mitigation sequencing) to project impacts during design:
 1. Avoidance
 2. Minimization / Reduction
 3. Rectification
 4. Compensation (for unavoidable impacts)
 5. Monitoring



Seasonal watercourse in existing residential neighborhood

What is Best Available Science?

- Research and guidance
 - Conducted by qualified individuals
 - Documented methodologies
 - Verifiable results and conclusions
- Published bibliographies; state guidance; primary research publications
- 1995 Amendment to the GMA requires consideration of “best available science” for protecting critical areas

RCW 36.70A.172

Critical areas — Designation and protection — Best available science to be used.

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

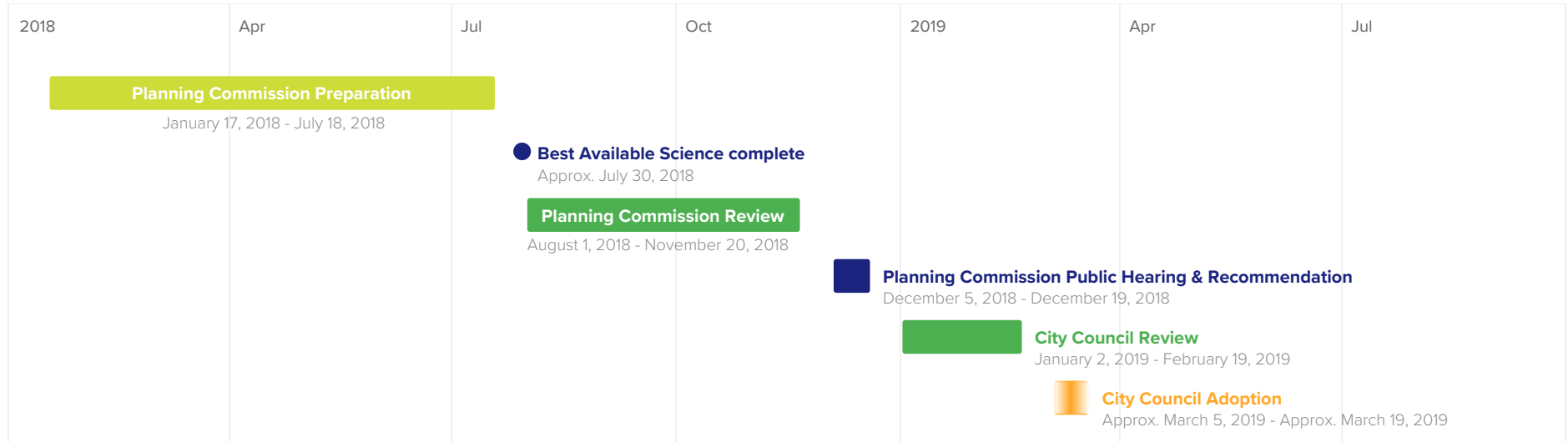
(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain assist in reviewing a petition under RCW 36.70A.290 that involves critical areas.

[2010 c 211 § 3; 1995 c 347 § 105.]

		Code Option 1	Code Option 2	Code Option 3	
Gatekeeper Questions	Best available science Does the proposed policy follow the best available science? If not, have the risks of departing been identified and mitigated?	Yes/no	Yes/no	Yes/no	"No" answer alternatives do not advance to evaluation under decision-making factors
	Comprehensive Plan Is the comprehensive plan consistent, inconsistent, or silent on the proposed standard?	Consistent/ Inconsistent/ Silent	Consistent/ Inconsistent/ Silent	Consistent/ Inconsistent/ Silent	"No" answer alternatives do not advance to evaluation under decision-making factors "Null" answer alternatives may prompt a comprehensive plan update
	Case law Is the proposed standard consistent with case law?	Yes/no	Yes/no	Yes/no	"No" answer alternatives do not advance to evaluation under decision-making factors
Decision-making factors	Property owner interest How will the proposed standard affect: ... flexibility for development? ... individual economic return?				Decision-making factors may be rated on a scale of strong positive to strong negative denoted by the following: * "P" = Strongly positive effect * "p" = Weak positive effect * "O" = Neutral effect * "n" = Weak negative effect * "N" = Strong negative effect Code Options receiving a "N" rating on any decision-making factor are either: 1) modified to no longer receive a "N"; or 2) removed from consideration for the Planning Commission-recommended code.
	Community interest How will the proposed standard affect: ... future growth targets? ... community safety from natural hazards? ... social interaction?				
	Environmental interest How will the proposed standard affect: ... local environmental quality and ecosystem function? ... regional environmental quality and ecosystem function?				
	Administration To what extent is the standard: ... clear? ... objective? ... simple?				

CAO + SMP Timeline

Timeline of major milestones in the Critical Areas Code and Shoreline Master Program Update



Events

- **Planning Commission Preparation**
 January 17, 2018 - July 18, 2018
- **Best Available Science complete**
 Approx. July 30, 2018
- **Planning Commission Review**
 August 1, 2018 - November 20, 2018
- **Planning Commission Public Hearing & Recommendation**
 December 5, 2018 - December 19, 2018
- **City Council Review**
 January 2, 2019 - February 19, 2019
- **City Council Adoption**
 Approx. March 5, 2019 - Approx. March 19, 2019

ESA will research and provide Best Available Science, on which the City's revised critical areas code will be based.

CITY OF MERCER ISLAND

Critical Area Code & Shoreline Master Program:

Public Participation Plan

Introduction

The City of Mercer Island is undertaking a periodic review of its Critical Areas Code and Shoreline Master Program (SMP), as required by the Growth Management Act (RCW 36.70A) and the Washington State Shoreline Management Act (SMA), RCW 90.58.080(4), respectively. Both sets of codes are required to be reviewed and revised, if needed, on an eight-year schedule established by the Legislature. The review ensures the Critical Areas Code and SMP stay current with changes in laws and rules, remains consistent with other City of Mercer Island plans and regulations, and is responsive to changed circumstances, new information and improved data.

A Public Participation Plan is required to describe how the City of Mercer Island will encourage early and continuous public participation throughout the process of reviewing the Critical Areas Code and SMP.

This Public Participation Plan describes the steps that the City of Mercer Island will take to provide opportunities for public engagement and public comment. This plan is a working document and will be adjusted as needed to provide for the broadest public participation and adapt to changing circumstances and emerging needs in order to serve the plan public participation goals.

1.0 Public Participation Goals

1. To make the project scope and parameters of potential legislative changes clear to the public
2. To get on-point, actionable comments
3. To educate stakeholders on critical areas and shoreline issues
4. To provide a transparent, welcoming, and collaborative public participation process
5. To provide interested parties with timely information, an understanding of the code update process, and multiple opportunities to review and comment on proposed amendments to the Critical Areas Code and SMP.

2.0 Messaging

In an effort to obtain comments that are on-point and actionable, staff will use the following messages and questions in outreach communications:

- There are bookends in the range of policy options available to us. Regulations are required by state law to be based in science. If Mercer Island's regulations depart from the scientific recommendation, they must compensate for the risks posed by doing so.
- Which aspects or qualities of regulations are most important to you? (Is it environmental protection, flexibility for development, safety, or simplicity of standards? Or something else?)
- What should the City's goals be, as related to environmental protection? Should we minimize impacts and avoid all risk, or should the community accept some impacts and risk in specific circumstances?

3.0 Community Engagement Methods

The City of Mercer Island is committed to providing multiple opportunities for public participation throughout the process. The City will use a variety of communication tools to inform the public and encourage their participation, including the following:

3.1 Reference Materials

Reference materials, on topics such as state requirements for Critical Areas and SMP updates, the best available science on the different critical area types, and a glossary will be prepared for the Planning Commission and will be made publicly available on the website.

3.2 Website

The City of Mercer Island's website will include a Critical Areas/SMP Periodic Review webpage where interested parties can access status updates, draft documents, official notices, minutes and other project information. The webpage will be the primary repository of all information related to the Critical Areas/SMP Periodic Review process. The page will include links through which visitors can obtain more information and provide comment.

3.2.1 Webpage maintenance

The website should be maintained to only show current information, to greatest extent feasible. A description of the current status and links to the current draft of the code, calendar, and if possible FAQ should be above the fold. Previous versions of documents should be removed, and reference materials should be posted on a subpage.

3.2.2 Blog

A blog, published on regular, predictable schedule will be hosted on the project webpage. The content will be primarily informative (e.g. announcing upcoming meeting topics) but may also include staff thoughts and reflections on the code update process (e.g. the challenge of finding the right balance of risk vs. liberty in development regulations in geologically hazardous areas), or links to third party articles about relevant environmental issues and managing risk.

3.2.3 Calendar

A project calendar, generally showing the timing and sequence of project steps should be posted to the website. The resolution should be shown by month, and the steps should include general project phases and milestones.

3.3 Community Meetings

The City of Mercer Island Planning Commission will hold up to three community meetings to educate the public and hear comment. The community meetings may be held in an open house format or a Planning Commission panel for public question and answers format.

3.4 Interested parties email list

An email list of interested parties will be created, advertised and maintained by the City of Mercer Island. The list will be used to notify interested parties regarding Periodic Review progress and participation opportunities. Examples include Planning Commission meetings, notifications that Planning Commission packets are available, and notifications of when the best available science is available. Interested parties will be added to the list by contacting DSG staff via the project website,

directly via email, through comment letters/emails, or through indicating interest on community meeting sign-in sheets. Only persons who explicitly request to be on the interested parties list will be added to the list.

3.5 Comment

Interested parties will be encouraged to provide comments to City staff via the website or email. All comments will be forwarded to staff and, during Planning Commission review, commission members. Documents will be available for review at the front counter, and copies will be provided at the established copying cost. A project email address (e.g. CAupdate@mercergov.org) will be established for public comment and questions, which will be distributed to specified staff.

3.6 Planning Commission Regular Meetings and Public Hearing

Planning Commission meetings will be the primary forum for detailed review and recommendations to City of Mercer Island staff. Interested parties are encouraged to attend and provide comments during Planning Commission deliberations and/or public hearing.

3.7 News Media

The Mercer Island Reporter will be kept up-to-date on the Critical Areas and SMP code update process and receive copies of all official notices. The Project Manager may elect to send press releases or reach out directly to reporters at key junctures in the project process.

3.8 MI Weekly

At project milestones (e.g. public hearings, community meetings etc.), articles may be published in the MI Weekly announcing project progress, and letting recipients know of upcoming opportunities to participate and comment.

3.9 Social media

The City has accounts on Facebook, Twitter, and YouTube, which may be used to disseminate information at key milestones.

3.10 Direct outreach at local schools, community organizations

As opportunities arise, City staff may speak at local schools and community organizations to inform, educate, and receive input.

3.11 Public Notices

Public notice will be provided at times and through the channels required by the City of Mercer Island code, e.g. in advance of public hearing.

4.0 List of stakeholders

The City will engage the following stakeholders:

1. Mercer Island residents
2. Businesses located on Mercer Island
3. Business engaged in work on Mercer Island
4. Snohomish and Muckleshoot Tribes
5. WA Dept. of Fish & Wildlife

6. WA Dept. of Ecology
7. Other groups as the City becomes aware of them

5.0 Public Comment Organization

City staff are responsible for maintenance of the official public record. In order to maintain the public record in an organized way and make comment easy to retrieve by topic, comments received will be organized as follows:

1. Emails
 - a. Convert to PDF
 - b. Copy saved in project folder on V: drive, Public Folder, and Website
 - c. Name, contact information (email and/or street address as provided), a summary of the comment and applicable topic tags will be logged in an index of public comments.
2. Letters
 - a. Scan and convert to PDF
 - b. Copy saved in project folder on V: drive, Public Folder, and Website
 - c. Name, contact information (email and/or street address as provided), a summary of the comment and applicable topic tags will be logged in an index of public comments.

Topic tags include: “Watercourses”, “wetlands”, “geologic hazard areas”, “CARAs”, “administration”, “general”.

6.0 Public Comment Periods and Hearings

The Planning Commission will conduct a public comment period and at least one public hearing to solicit input on the Periodic Review.

The City of Mercer Island will coordinate with the Department of Ecology on public notification of comment periods and hearings to take advantage of Ecology’s optional SMP amendment process that allows for a combined state-local comment period (WAC 173-26-104).

Public notice of all hearings will state who is holding the comment period and/or hearing, the date and time, and the location of any public hearing. Notices will be published per MICC 19.15 and comply with all other legal requirements such as the Americans with Disabilities Act. A notice will be sent to the email list (3.4, above) and the Department of Ecology.