

ITEM #: 7
DATE: 01-20-16

COMMISSION ACTION FORM

REQUEST: Rezone properties with a FEMA-designated floodway to include the Environmentally Sensitive Area Overlay (O-E)

BACKGROUND INFORMATION:

The City's Zoning Ordinance (Chapter 29) includes specific base zones for allowed uses and development standards that govern most aspects of the use of a property. In addition to base zones, the City also at times applies Overlay Zones to address issues that are broader than one zoning district or affect a subset of properties within a base zoning district. In an effort to manage natural resource protection and development activities within floodways and riparian areas within the flood plain, the City now seeks to apply an "Environmentally Sensitive Area Overlay (Section 29.1103)" to properties throughout the City that have a floodway or general flood plain designation by FEMA. The Overlay does not change the base zoning for allowed principal use, but changes the permitting process for activities within the Overlay.

The purpose of the Environmentally Sensitive Overlay (O-E) Zone is quoted below and the full text is found in Attachment 1.

The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks, and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

The ordinance allows such overlays to be mapped based on a scientific study that concludes the area is "especially sensitive to adverse public impact from development due to unique environmental concerns." The ordinance notes that flood plains, designated natural resource areas, parks and open spaces, greenways, and lands above aquifers are eligible based on existing scientific evidence (FEMA (Federal Emergency Management Agency) Flood Insurance Study, Norris Study of 1994, etc.). Other areas may be so designated by the City Council based on other scientific studies done by the City or by other parties. **The proposed rezoning will be the first application of the O-E to specific properties within the City.**

Currently, the City restricts the types of uses allowed in the floodway and floodway fringe through standards in Chapter 9 of the Ames Municipal Code. Chapter 9 includes both restrictions on use and performance standards for uses that are permitted. There is a fundamental difference in Chapter 9 between floodways and floodways fringe areas. The approach for floodways is to restrict activities that impact flood events while in the floodway fringe the intent is to ensure actives are protected during a 100-year flood

event.

The minimum standard for an activity that would be permitted in a floodway is to ensure there is “no rise” in the 100-year flood level. Improvement activities within the floodway generally necessitate approval of Conditional Use Permit by the Zoning Board of Adjustment based upon criteria found in Chapter 9. Within the floodway fringe, the City requires protection of property and improvements through either flood proofing or a standard of elevating improvements to three feet above the base flood elevation. There are additional requirement for receiving a flood plain permit, but that is the most important.

The O-E does not contain specific regulatory standards, such as use limitations or design standards. Rather, it changes the process for approval and requires the applicant to prepare an Environmental Assessment Report on how the development will “address, obviate, or mitigate” the environmental issues which led to the designation.

If the O-E is mapped to specific properties, it is proposed to only affect activities within the overlay area and not to the whole of the property. This means that with the O-E applied to properties within a floodway, that development as it occurs today in the floodway fringe will continue to be the same process and standards and be unaffected by the overlay. **However, any activity within the O-E (i.e., the floodway) will have a different approval process that will require City Council approval (following a recommendation by the Planning and Zoning Commission) of a Major Site Development Plan.**

Staff notes that there are companion text amendments on this same agenda that are proposed to Chapter 9 (Flood Plain Zoning Regulations) and to Section 29.1103 (O-E) to implement the O-E as intended for the floodway. The language of these text amendments more fully explains the types of activities regulated by the O-E and Chapter 9 and the process for their review.

Staff identified all properties for which at least part of the property was covered by the Floodway designation by FEMA. There are in excess of 400 properties with either a floodway or general flood plain designation. Staff has notified 320 property owners of the proposed rezoning action. Some property owners control multiple properties. Further analysis of the proposal is found in the Addendum. A map of the FEMA-designated Floodway, Floodway Fringe, and General Flood Plain is found in Attachment B.

ALTERNATIVES:

1. The Planning and Zoning Commission can recommend that the City Council approve the request to place the Environmentally Sensitive Area Overlay (O-E) on the Floodway, based upon staff’s analysis as found in the addendum.
2. The Planning and Zoning Commission can recommend that the City Council deny the request to place the Environmentally Sensitive Area Overlay (O-E) on the

Floodway, if the Commission finds that the City's regulations and policies are not met.

3. The Planning and Zoning Commission can defer action on this request and refer it back to City staff for additional information.

RECOMMENDED ACTION:

As explained more fully in the accompanying Commission Action Form on the text amendments to Chapter 9 and to Section 29.1103, the development standards for the O-E zone require the developer or owner to better address potential development issues with activities in the floodway. The most common types of features that appear in a floodway on private property are accessory site improvements, such as parking lots or stormwater drainage facilities. Principal buildings are not permitted in a floodway. Applying the O-E will require an applicant to mitigate adverse impacts and consider a more comprehensive set of issues beyond just the potential rise in base flood elevation. The current language of Chapter 9 is more limited in scope in not requiring mitigation of adverse impacts of the development as a whole, including that portion of the property that may lie within the Floodway Fringe.

Staff supports the placing of the O-E overlay district over the Floodway and General Flood Plain, but only in conjunction with the recommended text amendments to Chapter 9 and Section 29.1103, also presented to the Commission at this meeting. The combined text amendments clarify the standards and process for administration of the overlay. **Therefore, the Planning and Housing Department supports Alternative #1, asking the Planning and Zoning Commission to recommend that the City Council approve the request to place the Environmentally Sensitive Area Overlay (O-E) on the Floodways.**

ADDENDUM

REZONING BACKGROUND:

Land Use Policy Plan. The LUPP provides several references to protection of waterways. These include:

Chapter 1. Planning Base: Goals for a New Vision

Goal No. 3. *It is the goal of Ames to assure that it is an “environmentally-friendly” community and that all goals and objectives are integrated with this common goal. In continuing to serve as a concentrated area for human habitat and economic activity, Ames seeks to be compatible with its ecological systems in creating an environmentally sustainable community.*

Objectives. *In assuring the community’s “environmental-friendliness”, Ames seeks the following objectives.*

- 3.A. *Ames seeks to provide biodiversity through the inclusion of plant and animal habitats. Their inclusion shall be provided through such methods as conservation management, protection, replacement, etc.*
- 3.B. *Ames seeks to maintain and enhance the value of its stream corridors as drainageways and flood management areas, plant and animal habitats, recreational and scenic areas, and pathways for linking the overall community.*
- 3.C. *Ames seeks to protect and conserve its water resources for the following purposes: aquifer protection; water quality protection; user conservation management; plant and animal life support; water-borne recreation; scenic open space; and, provision of a long-term/reliable/safe source of water for human consumption and economic activities.*
- 3.D. *Ames seeks to protect and conserve its energy sources for the following purposes: energy consumption reduction through provision of an integrated multi-modal transportation system, and through land use practices that minimize vehicular trips; user conservation management; material recycling; and, long-term/reliable/safe source for the support of human and economic activities.*

Chapter 2. Land Use: Future Land Use Classification

Environmentally Sensitive Areas. *The designation involves flood prone areas, wetlands, water bodies and designated natural resources that should be protected from detrimental use. Included are areas previously identified as “Floodway” and “Floodplain”; plus selective natural resources from the “Natural Resources Inventory”. Areas designated “Environmentally Sensitive Areas” may or may not be suitable for*

development. In the event that development is determined to be appropriate, special requirements may be necessary to ensure environmental compatibility.

Findings of Fact. Based upon an analysis of the proposed rezoning and laws pertinent to the proposed map amendment, staff makes the following findings of fact:

1. Ames Municipal Code Section 29.1507(1) allows the City Council to initiate an amendment to the Official Zoning Map, which occurred on November 10, 2015.
2. The subject properties are located within the Floodways, or General Flood Plain, as defined by FEMA.
3. The LUPP Goals 1 and 2 supports identifying and conserving water resources for multiple purposes.
4. Chapter 2 of the LUPP anticipates a correlation between areas identified as Floodways and as Environmentally Sensitive Areas.
5. Chapter 9 of the Ames Municipal Code governs development within the Floodway and Floodway Fringe, limiting certain uses and providing development standards.
6. Section 29.1103 of the Ames Municipal Code describes the approval mechanism for proposed development within any area zoned as O-E.

Public Notice. The City identified all properties in which at least a portion lies within the Floodway. Staff mailed approximately 320 letters in December stating the intent and direction of the City Council. An additional notice of public hearing was sent prior to the Planning and Zoning Commission meeting in accordance with the notification requirements of Chapter 29.

Conclusions. Based upon the analysis in this report, staff concludes that the proposed placement of the O-E overlay district on the Floodway and General Flood Plain within the City limits is consistent with the Goals and Objectives of the City of Ames Land Use Policy Plan.

ATTACHMENT A: FULL TEXT OF SECTION 29.1103 [CURRENT]

Sec. 29.1103. "O-E" ENVIRONMENTALLY SENSITIVE AREA OVERLAY.

(1) **Purpose.** The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

(2) **Designation of Environmentally Sensitive Areas.** Any area may be designated an O-E Zone by ordinance of City Council, after the advice and recommendation of the Planning and Zoning Commission, if the results of a scientific study of the area support the conclusion that the area so designated is especially sensitive to adverse public impact from development due to unique environmental circumstances. Examples of such areas that may be designated as an O-E zone are:

- (a) Flood Plain Areas. Those areas defined in Chapter 9 of the Municipal Code;
- (b) Designated Natural Resource Areas. Those areas defined in "A Natural Areas Inventory of Ames" (July 18, 1994);
- (c) Park and Open Space Areas. Those areas defined in the City's Parks and Recreation Master Plan of the Municipal Code;
- (d) Green-ways. Those areas as may be defined as Green-ways by the City Council; and
- (e) Aquifer Protection Areas. Those areas as may be defined as Aquifer Protection Areas as defined by the City Council.

(3) **Studies.** The Department of Planning and Housing and the Planning and Zoning Commission are authorized to conduct studies in order to evaluate areas for environmental sensitivity as part of the continuing process of maintaining a current comprehensive land use plan for the City. Additionally, studies done by or for other governmental or private parties may be adopted for the purposes of this section.

(4) **Procedures.** No Building/Zoning Permit shall be issued and no grading, excavation, construction or change in use shall occur in an area designated as an O-E Zone except in accordance with the procedures set forth in Section 29.1503(4), "Major Site Development Plan Review". In addition, the applicant shall prepare and submit an Environmental Assessment Report which shall detail how the problems identified in the study on which the O-E Zone designation was based will be addressed, obviated or mitigated. City Council shall not approve the Major Site Development Plan unless it has reviewed and approved the Environmental Assessment Report.

(5) **Enforcement.** Development or other activities in conflict with the Major Site Development Plan, or a failure to implement the Plan, including the measures set out in the Environmental Assessment Report shall constitute the violation of this section for which any and all enforcement means and remedies established by law or zoning regulations may be invoked and instituted.

ATTACHMENT B: FLOOD PLAIN MAP

