

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Eric McConaghy, Council Central Staff
Date: January 12, 2017
Subject: Environmentally Critical Areas Regulations Amendments, Council Bill 118853

Seattle regulates development in and adjacent to environmentally critical areas (ECAs) consistent with the requirements of the Washington State Growth Management Act.¹ The City's ECA regulations are found in the [Seattle Municipal Code \(SMC\) Chapter 25.09](#). The regulations cover five categories of ECAs: geologic hazard areas, flood-prone areas, wetlands, fish and wildlife habitat conservation areas and abandoned landfills.

Seattle's ECA regulations apply generally to development or platting² of publicly-held or privately-owned parcels of land containing an ECA or buffer³ of an ECA. Development includes all components and activities related to construction or disturbance of a site.

Proposed Code Changes

SDCI proposes amendments to Seattle's ECA regulations consistent with the state requirement for periodic update to the regulations and the inclusion of best available science in the development of the update. The most recent update to Seattle's ECA regulations was in 2006. The proposed amendments would:

- Increase the buffer of Class III wetlands⁴ with moderate to high habitat function from 85 feet to 110 feet.
- Extend protection to areas that meet the definition of Washington Department of Fish and Wildlife (WDFW) biodiversity areas and corridors (currently only areas that are mapped as WDFW biodiversity areas and corridors are protected.)
- Allow the SDCI Director to protect WDFW Priority Habitat in addition to Priority Species with measures contained in a Director's Rule.
- Remove the City requirement for State Environmental Policy Act (SEPA) review for certain projects that are exempt from SEPA under SMC 25.09.800, but are located in a critical area, and add clear and predictable regulations protecting the environmentally critical areas.
- Apply standards to achieve better fit in existing neighborhoods in subdivision processes. The proposal would require area outside of the ECA to be available for utility

¹ [Revised Code of Washington \(RCW\) Chapter 36.70A](#).

² "Platting" is the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

³ A buffer is the area within a defined distance from a feature, in this case, an ECA.

⁴ Wetlands are classified based on a rating system promulgated by DOE. The current classification system is set out in [Washington State Wetland Rating System for Western Washington: 2014 Update](#). Class III wetlands generally have moderate water-quality and hydrologic functions.

connections and apply certain development standards based on the area of the lot outside the ECA. New houses would be required to meet the single-family lot coverage, maximum height, and yard standards based on the non-ECA area.

- Include a new section that establishes the steps in mitigation sequencing as set out in the 2007 Department of Community, Trade and Economic Development's Critical Areas Assistance Handbook: Protecting Critical Areas within the Framework of the Washington Growth Management Act.

Additional changes to the regulations that provide clarity in implementing the regulations are also included in this update. Also, SDCI has developed changes to Director's Rules in concert with the regulatory amendments.

Proposed Changes to Director's Rules

The SMC provides for the SDCI Director to establish rules interpreting Municipal Code provisions. While Council's approval is not necessary for the SDCI Director to make changes to DRs, SDCI has briefed Council regarding the proposed amendments to the ECA regulations in coordination with related changes to two DRs:

1. Great Blue Heron Management Plan (DR 5-2007) and
2. State Environmental Policy Act (SEPA) Exemptions from Environmental Review Requirements When Establishing, Changing or Expanding a Use (DR 29-2015)

The changes to DR 5-2007 deal with year-round and seasonal buffers around Great Blue Heron nesting colonies; extends the timing of the seasonal buffer by one month; updates terms and definitions; strengthens tree preservation; maps the great blue heron staging area for monitoring; and specifies a ten-year term of protection for abandoned nesting colonies.

The changes to DR 29-2015 would allow vegetation management that meets the ECA requirements as a SEPA-exempt activity if it meets the SEPA exemption thresholds and would amend language in the rule to correspond to the proposed updates to the ECA regulations.

Recap of PLUZ consideration of amendments

On November 29, 2016, PLUZ discussed the proposal after SDCI staff briefed PLUZ on the amendments to the ECA regulations and the Director's Rules. On December 6, 2016, PLUZ held a public hearing on the amendments and continued discussion. At the same meeting, some people spoke during public comment on the changes to the DR 5-2007.

Public comment on the proposal and responses

Council staff have gathered comments on the proposal submitted to Council. The separate issues regarding the ECA code amendments are shown in Table A with city staff responses. Similarly, comment and responses on the Great Blue Heron DR are provided in Table B (Central Staff are not aware of comment on DR 29-2015)

Table A: Public Comments on ECA Code Amendments and SDCI Responses

No.	SMC reference (per CB 118853)	Comment	SDCI Response
1	25.09.260	When platting lots affected by ECA regulations, there should be a fixed minimum lots size of not less than 50% of the zoned density	The proposed standards effectively limit the developable footprint for new lots. New houses would be required to meet the single-family lot coverage, maximum height, and yard standards based on the non-ECA area, since that is in effect the buildable area of the development. This requirement could constrain the size of some houses on some lots, but is not intended to limit the number of houses that would result from the subdivision of the lot into smaller lots.
2	25.09.260 and 25.09.280.B.5	Consideration of “neighborhood compatibility” should regulate when provisions of administrative conditional use (ACU) apply.	The proposed standards are clearer and more specific than calling for “neighborhood compatibility.” The amendments stipulate that development standards are applied based on the area outside of an ECA. This change is intended to result in development that does not appear out of scale with existing development in the vicinity and same zone.
3	Multiple	Include tables, if possible, to outline and summarize lot coverage requirements and development allowances relative to conditions such as steep slopes, wetlands, watercourses, etc...	The suggested change is not feasible because determinations based on site conditions are site-specific. Note, however, that standards in the Land Use and Stormwater Codes are often tabulated.
4	25.09.090.D	Define “water course” or “watercourse.”	The term, “riparian watercourse” is defined in subsection 25.09.012.D.5.a
5	25.09.160.E.2	The proposal should amend the code to provide explicitly for adaptive management to be integrated with any monitoring plan.	The ECA code requires monitoring the success of restoration. The process of updating the ECA code is a form of adaptive management that changes management action based on best available science.
6	25.09.240	Define “unit lot subdivision.”	The term is defined in SMC 23, the land use chapter.
7	25.09.280 and 25.09.290	Variance from ECA regulations to allow tree removal in critical areas should not be allowed.	In general, the code does not allow tree removal in critical areas. The ECA regulations protect all vegetation including trees in the steep slope geologic hazard areas, wetlands and their buffers and fish and wildlife habitat conservation areas.

8	25.09.070.G.2a	Exceptional trees should not be allowed to be removed in Critical Areas, regardless of mitigations or engineering solutions.	Variance and exceptions allow for flexibility in applying the regulations to allow some reasonable use of property. Protection of exceptional trees is provided in Chapter 25.11 and all trees are protected in 25.09.320.
9	25.09.260	Mitigation is not a reason enough to justify intrusion into up to 30% of a critical area, for reasons of hardship to a developer, allowing exceptional tree losses and subdivisions of single family lots.	<p>The allowance of no more than 30% disturbance on developable sites with steep slope ECA designation dates from 1992 with the original drafting of the ECA code. The process for applying for up to 30% disturbance was tightened up in 2006 by adding a variance process to the ECA code. Thirty percent has never been an automatic allowance, the requirement is for the minimum disturbance up to 30%. The 30% limit is roughly comparable to lot coverage allowance for structures in single-family zones.</p> <p>Application of the 30% limit has never been an automatic allowance. It has always been discretionary to allow the least amount of disturbance up to 30 percent, based on the specific facts and conditions on a particular site. See SDCI memorandum 12/14/2016.</p>
10	25.09.012.D	The bill, as proposed, fails to include habitat for endangered, threatened, and sensitive species within the definition of fish and wildlife habitat conservation areas (FWHCA).	SDCI has proposed an amendment responsive to this comment from WA Dept. of Ecology (DOE). See Attachment A.
11	25.09.160	Some of the wetland buffer widths listed in Table A for 25.09.160 are not consistent with BAS and the applicable buffer standards are not well defined.	SDCI has proposed an amendment responsive to this comment from WA DOE. See Attachment A. The buffers for Category III wetlands have been increase as follows: Buffer widths for wetlands with a high level of habitat function has increased to 200 feet and buffer widths for wetlands with a moderate level of habitat function has increased to 135 feet. Additionally, two new categories of Category I wetlands have been added: these two new categories are bogs and wetlands of high conservation value. These wetlands will have a 200 feet buffer.
12	25.09.012.A.6	Update the Seismic Hazard Areas provisions to incorporate the Washington State Department of Natural Resources'	The current maps used to designate liquefaction prone areas are based on sources superior to the DNR maps. SDCI has not adopted a Site Class map

		(DNR) Liquefaction Susceptibility and Site Class Maps.	because site class (soils) is determined by specific subsurface information during the Building Permit or Master Use Permit stage. Moreover, SDCI does not believe that designating certain site classes as geologic hazards is appropriate for several reasons, including (1) a particular Site Class can include different types of areas already designated as critical areas, e.g. peat, liquefaction prone, or potential landslide due to geologic conditions; (2) Site Class D, E, or F are not necessarily geologic hazard areas.
13	25.09.012.B	Update the flood-prone areas provisions to include areas vulnerable to sea level rise as flood-prone areas and address the flooding, the higher storm surges, and increased erosion resulting from sea level rise.	These areas are in the Shoreline District. So, these regulations will be taken up in a separate process. SDCI will assess whether changes are necessary, and will make any amendments to the Shoreline Master Program to address sea level rise. This process requires the DOE's approval.
14	25.09.012.C.3	Clarify that clearing, grading, draining, and other wetland impacts will not be allowed before a wetland determination is made.	Existing and proposed regulations address this concern. See subsections 25.09.015.A, 25.09.040.A.1.a, and 25.09.160.C.1, and Section 25.09.330, especially subsections 25.09.330.B.1 and B.2. Additionally, any ground disturbance requires prior inspection through the stormwater code, SMC 22.800.
15	25.09.080 and 25.09.180	Adopt better protections from landside hazards for people and property.	The proposed added language to Sections 25.09.080 and 25.09.090 is not necessary. The Seattle Landslide Study (2000, updated 2003) mapped an area called "Potential Landslide due to Geologic Conditions" which includes areas of potential landslide runout. Landslide runout is extremely difficult to predict, but the authors of the Seattle Landslide Study visited many areas of the City to map areas where they thought runout was possible based on known geology, landslide history, and ground surface features. In addition, new development in landslide-prone areas requires "complete stabilization" of the developed area. As an example, during review of building permit applications, SDCI will sometimes ask for a catchment wall to protect a development from upslope slide hazards. Development proposed for the bottom of a bluff area would have to show that the slide hazard

			<p>has been mitigated. SDCI anticipates that changes to the landslide-prone area map that might include additional areas of runout would be based on 2016 mapping that is only recently being made available. SDCI has been in contact with United States Geological Survey (USGS) and WA Department of Natural Resources about delineating landslide hazard zones based on the latest mapping. It is currently not in the workplan of either organization. Finally, SDCI is aware of landslide hazard studies by the USGS and others that have appeared since the Seattle Landslide Study. SDCI has compared current geologic hazard mapping with the mapping in these studies. SDCI has not found a need to update our landslide-prone areas maps, other than the recent update of steep slope areas described in Director's Rule 10-2016.</p>
16	25.09.160	Improve wetland buffers to better protect wetlands and their important functions.	See response to #11.
17	25.09.200	The ECA code should prohibit fish barriers for crossings (access) over the riparian watercourses and require that crossings over riparian watercourses can pass the 100-year flood.	<p>The code language for access over a riparian watercourse is provided in subsection 25.09.200.A.2: "the access is provided by a freestanding structure that maintains the natural channel and floodway of the riparian watercourse". A freestanding structure means that there will be no structure in the channel; therefore, no fish blockages created.</p> <p>Regarding the 100-year flood standard: In addition to the ECA regulations Chapter 25.06 - Floodplain Development regulates development within the floodplain. These regulations have been approved by FEMA to meet Endangered Species Act. These requirements include not building structures that will increase flooding.</p>
18	25.09.200	The development standards for fish and wildlife habitat conservation areas must apply to properties that have fish and wildlife habitat conservation areas or their required buffers.	<p>These development standards apply to fish and wildlife habitat conservation areas. There are no set buffers for these areas. Instead the buffers are to be determined on a case-by-case basis. This requirement is in subsection 25.09.200.A.3.c.</p>

19	25.09.240	The ECA code regarding short subdivisions and subdivisions, should apply to all properties with critical areas and buffers.	The steep slope ECA buffer, unlike wetland ECA buffers, is not specifically defined. It is generally 15 feet but may be less or more than that for any specific site, based on evaluation of that site. The purpose of the steep slope buffer is to "protect steep slope areas from damage during construction and from intrusion following construction" (1995 amended policies page 46). Thus, the policies contemplated that development would be allowed on sites containing steep slopes, and the steep slope buffer was not viewed as an additional type of protected ECA. It is simply a practical requirement to ensure that development does not occur right on the edge of a slope, which might affect the slope. There is no reason to further limit platting of buffer areas when they are provided solely as a further protection for steep slopes that are themselves already subject to the requirements in 25.09.240.
20	25.09.290	If the City chooses to allow a steep slope erosion hazard area variance, then a variance should only be approved where the structures on the property will be safe and the development will not increase the potential for damage to other properties include streets and other public facilities.	This is already a requirement of the variance without the new proposed language. If a variance is granted in a steep slope erosion hazard area, it must be possible to develop the project so that the subject project is safe from slide hazards and the project itself does not cause offsite adverse impacts.
21	Multiple	Clarify ECA rules regarding the renovation and/or replacement of existing single-family homes on steep slopes and/or on waterfront lots.	This issue will be addressed with the upcoming amendments to the regulations governing ECAs in the Shoreline District as part of the Shoreline Management Program (SMP)
22	25.09.045 and 25.09.520	Clarify when the maintenance, repair, alteration, and renovation of existing structures in ECAs are exempt activities.	These changes are shown in the amendments to the bill in Attachment A to this memorandum.

Table B: Public Comments on Amendments to DR 5-2007 and SDCI Responses

No.	Comment	SDCI Response
1	The definition of Great Blue Heron (GBH) pre-nesting area is incomplete. It does not include the timing of the pre-nesting period, which appears only in the accompanying Director’s Report page 16. Note that the Director’s Report refers to pre-nesting as staging.	The pre-nesting information has been added to the Director’s Rule (DR).
2	The definition of “seasonal buffer” does not include a map showing the Kiwanis Colony’s location – a new location as of 2014 at Commodore Park, which overlaps the old colony location.	Maps of heron colonies are not included in the DR. Including maps in the DR would require a new rule every time a new location is identified. All known heron colonies are mapped on the City’s GIS, and any new information regarding new or moved heron colonies is added to these maps as SDCI learns about them. One source of this information is the Washington Department of Fish and Wildlife (WDFW). WDFW contacts SDCI staff as soon as they learn of new colonies or colonies that have moved.
3	The rule does not state what actions/protections should be taken after mapping of pre-nesting areas, which leaves the birds vulnerable to disturbance caused by construction projects beginning before February 1.	<p>There is a timing conflict between areas that are required to be protected per the Federal Endangered Species Act for the protection of threatened Chinook salmon and the pre-nesting areas for great blue heron. If no development is allowed in the pre-nesting area beginning in January, then the work window when the salmon protection regulations allow in-water work including work done by maritime businesses is allowed will be reduced.</p> <p>SDCI would like to better understand the areas that GBHs use for pre-nesting and evaluate if these areas could better serve both GBH and Chinook salmon. Additionally, because the area of pre-nesting includes areas within the Shoreline District, an amendment to the SMP is needed and therefore any changes within the Shoreline District should be evaluated at a separate time with amendments to the SMP.</p>

Clerical Amendments

Central Staff recommends two clerical amendments to CB 118853. The first would change the effective date language to reflect DOE review (Attachment B). The second would replace “Council Bill _____” with “Council Bill 118853” wherever the placeholder occurs in the bill (Attachment C).

Next steps

On January 19, PLUZ will continue discussion of the ECA bill and any amendments, including those proposed by SDCI (attached), with a possible vote on a recommendation on the bill to Full Council.

Attachments

Attachment A: SDCI's amendments to bill in response to comments

Attachment B: Amends effective date language

Attachment C: Replace "Council Bill _____" with "Council Bill 118853"

cc: Kirstan Arestad, Central Staff Executive Director
Ketil Freeman, Supervising Analyst