

#8

CITY OF SEATTLE
ORDINANCE

COUNCIL BILL 117913

AN ORDINANCE relating to environmentally critical areas, amending Sections 23.60A.156, 25.06.020, 25.06.030, 25.06.040, 25.06.050, 25.06.100, 25.06.110, 25.09.017, 25.09.020, 25.09.030, 25.09.040, 25.09.045, 25.09.055, 25.09.060, 25.09.120, 25.09.160, 25.09.180, 25.09.200, 25.09.260, 25.09.300, 25.09.320, and 25.09.520 of the Seattle Municipal Code to reconcile conflicts and discrepancies between regulations for development in floodplains in Chapter 25.06 and the regulations for flood-prone areas set forth in Chapter 25.09, and to clarify language and make minor amendments to the Regulations for Environmentally Critical Areas.

WHEREAS, the City Council has considered the best available science in adopting these amendments; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.60A.156 of the Seattle Municipal Code, adopted by Ordinance 124105, is amended as follows:

23.60A.156 Standards for environmentally critical areas in the Shoreline District

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B. Applicable regulations. Chapter 25.09, as set out in Ordinance 122050 and amended by Ordinances 122370, ~~((and))~~ 122738, 124105, and by this ordinance introduced as C. B. 117913, is incorporated by reference into this Chapter 23.60A with respect to the shorelines within the Shoreline District. The designations, standards and procedures in Chapter 25.09 are modified as set out in subsections 23.60A.156.E through 23.60A.156.N for environmentally critical areas in the Shoreline District. If there are any conflicts between the standards and procedures in Chapter 25.09 incorporated into this Chapter 23.60A and other provisions of the Shoreline Master Program, the requirements most protective of ecological functions apply, except when preempted by federal or state law or where this Shoreline Master Program expressly states that these regulations do not apply.



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Section 2. Section 25.06.020 of the Seattle Municipal Code, adopted by Ordinance 114395, is amended as follows:

25.06.020 Purpose((;))

The purpose of this ((e))Chapter 25.06 is to regulate development in areas of special flood hazard in accordance with standards established by the National Flood Insurance Program and the Washington State Department of Ecology and areas identified as flood-prone in subsection 25.09.020.B. This ((e))Chapter 25.06 is intended to promote the public health, safety and welfare and is not intended to protect or benefit any individual or any class or group of persons specifically, or to create or form the basis for any liability on the part of the City or its officers, employees or agents in connection with administration of this ((e))Chapter 25.06. This ((e))Chapter 25.06 shall be administered by affected City departments and interpreted to accomplish its stated purpose.

Section 3. Section 25.06.030 of the Seattle Municipal Code, last amended by Ordinance 121115, is amended as follows:

25.06.030 Definitions((;))

Unless specifically defined below, words or phrases used in this ((e))Chapter 25.06 shall be interpreted ((se-as))to give them the meaning they have in common usage. For purposes of this ((e))Chapter 25.06, the following words or phrases ((shall-be))are defined as ((described))set out below:

* * *

H. "Flood Insurance Rate Map (FIRM)" means the ((official map dated May 16, 1995, on which the Federal Insurance Administration))most current map provided by the Federal Emergency Management Agency (FEMA) for administration of the National Flood Insurance Program that has delineated both the areas of special flood hazards and the risk premium zones



applicable to The City of Seattle, or as otherwise required by the Department of Homeland Security.

* * *

Section 4. Section 25.06.040 of the Seattle Municipal Code, adopted by Ordinance 114395, is amended as follows:

25.06.040 Applicability((;))

This ((e))Chapter 25.06 shall apply to all areas of special flood hazards within the jurisdiction of The City of Seattle. This Chapter 25.06 shall also apply to flood-prone areas as defined in subsection 25.09.020.B that are not located within areas of special flood hazards, as provided in this Chapter 25.06 by cross reference to subsection 25.09.020.B.

Section 5. Section 25.06.050 of the Seattle Municipal Code, last amended by Ordinance 121115, is amended as follows:

25.06.050 Identification of areas of special flood hazard((;))

Areas of special flood hazard in The City of Seattle are identified by the ((Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for King County, Washington and Incorporated Areas," dated May 16, 1995, with accompanying Flood Insurance Rate Maps. The study and maps are filed in C.F. 296948))most current map provided by the Federal Emergency Management Agency (FEMA) for administration of the National Flood Insurance Program, which is ((and are))hereby adopted by reference and declared to be a part of this ((e))Chapter 25.06. The ((study and))map((s)) shall be maintained on file at the Department of ((Design, Construction and land use))Planning and Development and the Seattle Public Utilities((and may be maintained on file at the Seattle Park Department, the Seattle-King County Department of Public Health, and other City offices)).

Section 6. Section 25.06.100 of the Seattle Municipal Code, adopted by Ordinance 114395, is amended as follows:

1 **25.06.100 General standards((;))**

2 In all areas of special flood hazards((;)) and in all other flood-prone areas defined in
3 subsection 25.09.020.B, the following standards are required:

4 A. Anchoring((;))

5 1. All new construction and substantial improvements shall be anchored to
6 prevent flotation, collapse, or lateral movement of the structure.

7 2. All manufactured homes (~~((must likewise))~~)shall be anchored to prevent
8 flotation, collapse, or lateral movement((;)) of the structure and shall be installed using methods
9 and practices that minimize flood damage.

10 B. Construction ((M))materials and ((M))methods((;))

11 1. All new construction and substantial improvements shall be constructed with
12 materials and utility equipment resistant to flood damage.

13 2. All new construction and substantial improvements shall be constructed using
14 methods and practices that minimize flood damage.

15 3. Electrical, heating, ventilation, plumbing, (~~((and))~~)air-conditioning equipment,
16 and other service facilities shall be designed and/or otherwise elevated or located, (~~((se-as))~~)to
17 prevent water from entering or accumulating within the components during conditions of
18 flooding.

19 C. Utilities((;))

20 1. All new and replacement water supply systems shall be designed to (~~((minimize~~
21 ~~or))~~)eliminate or minimize infiltration of floodwaters into the system,((;))

22 2. New and replacement sanitary sewage systems shall be designed to (~~((minimize~~
23 ~~or))~~)eliminate or minimize infiltration of floodwaters into the systems and discharge from the
24 systems into floodwaters,((; and))



3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision ~~((P))~~proposals~~((:))~~

1. All subdivision proposals shall be consistent with the need to minimize flood damage~~((:))~~

2. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage~~((:))~~

3. All subdivision proposals shall have adequate drainage ~~((provided))~~to ~~((reduce))~~minimize exposure to flood damage~~((:and))~~

4. ~~((Where))~~If base flood elevation data has not been provided or is not available from another authoritative source, the applicant shall provide such data for subdivision proposals and other proposed developments ~~((which))~~that contain at least ~~((fifty-))~~50~~((:))~~ lots or five~~((:5))~~ acres, ~~((:))~~whichever is less~~((:))~~.

E. ~~((Where))~~If elevation data is not available either through the ~~((Flood Insurance Study))~~most current map provided by the Federal Emergency Management Agency (FEMA) for administration of the National Flood Insurance Program or from another authoritative source, proposed construction shall be made reasonably safe from flooding. The evaluation of reasonableness shall include consideration of historical data, high water marks; photographs of past flooding, and similar information ~~((where))~~if available.

Section 7. Section 25.06.110 of the Seattle Municipal Code, last amended by Ordinance 121828, is amended as follows:

25.06.110 Standards involving base flood elevations~~((:))~~

~~((In all areas of special flood hazards where))~~If base flood elevation data has been provided under Section 25.06.050 or subsection 25.06.090.C~~((of Section 25.06.090, the~~

1 following are required:)), the standards of subsections 25.06.110.A through 25.06.110.E apply to
2 areas of special flood hazards and to flood-prone areas defined in subsection 25.09.020.B.

3 A. Residential ((C))construction((?))

4 1. New construction and substantial improvement of any residential structure
5 shall have the lowest floor, including basement, elevated to ((two-))2((?)) feet or more above
6 base flood elevation.

7 2. Fully enclosed areas below the lowest floor that are subject to flooding are
8 prohibited((?)) or shall be designed to automatically equalize hydrostatic flood forces on exterior
9 walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement
10 ((must))either are required to be certified by a registered professional civil engineer or architect
11 or ((must))are required to meet or exceed the following minimum criteria:

12 a. A minimum of two ((2))openings having a total net area of not less
13 than ((one-))1((?)) square inch for every square foot of enclosed area subject to flooding shall be
14 provided;

15 b. The bottom of all openings shall be no higher than ((one-))1((?)) foot
16 above grade; and

17 c. Openings may be equipped with screens, louvers or other coverings or
18 devices ((provided that))if they permit the automatic entry and exit of floodwaters.

19 B. Non-residential and ((L))live-work ((U))unit ((C))construction. New construction and
20 substantial improvement of any commercial, industrial or other non-residential structure,
21 ((C))including a structure with one or more live-work units,((?)) shall either have the lowest floor,
22 including basement, elevated to ((two))2 feet ((2'))or more above the level of the base flood
23 elevation((?)) or, together with attendant utility and sanitary facilities, shall:

24 1. Be floodproofed so that below ((two))2 feet ((2'))above the base flood level
25 the structure is watertight with walls substantially impermeable to the passage of water;



2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

3. Be certified by a registered professional civil engineer that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection 25.06.110.B based on ~~((their))~~ the civil engineer's development ~~((and/))~~ or review of the structural design, specifications and plans. ~~((Such certifications shall be provided as set forth in subsection C of Section 25.06.070.))~~

Non-residential structures or structures with one ~~((1))~~ or more live-work units that are elevated, not floodproofed, ~~((must))~~ shall meet the same standards for space below the lowest floor as ~~((described))~~ set out in subsection 25.06.110.A.2 above. ~~((Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot (1') below the floodproofed level (e.g., a building floodproofed to one foot (1') above the base flood level will be rated as at the base flood level.))~~

C. Critical ~~((F))~~ facilities. Construction of new critical facilities shall be located outside the limits of the areas of special flood hazard and outside the limits of all other flood-prone areas as defined in Chapter 25.09 where possible. Construction of new critical facilities shall be permissible within areas of special flood hazard and all other flood-prone areas as defined in Chapter 25.09 if no feasible alternative site is available. Critical facilities constructed within areas of special flood hazard and all other flood-prone areas as defined in Chapter 25.09 shall have the lowest floor elevated to ~~((three-))~~ 3() feet above the level of the base flood elevation at the site. Floodproofing and sealing measures ~~((must))~~ shall be taken ~~((to ensure))~~ so that toxic substances will not be displaced by or released into floodwaters. Access routes to all critical facilities shall be elevated to or above the level of the base flood elevation to the extent possible.

D. Manufactured ~~((H))~~ homes. All manufactured homes within Zones A1-30, AH, and AE on the FIRM or within all other flood-prone areas as defined in Chapter 25.09 shall be

1 elevated on a permanent foundation so that the lowest floor of the manufactured home is ~~((two~~
2 ~~))2((3))~~ feet or more above the base flood elevation~~((5))~~ and shall be securely anchored to an
3 adequately anchored foundation system in accordance with the provisions of ~~((S))~~ subsection
4 25.06.100.A.

5 E. Recreational ~~((V))~~ vehicles. Recreational vehicles placed on sites within areas of
6 special flood hazard shall ~~((either))~~ be:

7 ~~((1-be-e))~~1. On the site for fewer than ~~((one hundred eighty-))~~ 180~~((3))~~
8 consecutive days;

9 ~~((2-be-f))~~2. Fully licensed and ready for highway use, on their wheels or jacking
10 system, attached to the site only by quick disconnect type utilities and security devices, and be
11 without permanently attached additions; or

12 ~~((3-m))~~3. Meet the requirements for manufactured homes specified in
13 ~~((S))~~ subsection 25.06.110.D, above.

14 Section 8. Section 25.09.017 of the Seattle Municipal Code, last amended by Ordinance
15 122050, is amended as follows:

16 **25.09.017 Administration~~((r))~~**

17 A. The Director shall administer and interpret the provisions of this ~~((e))~~ Chapter 25.09,
18 except as specifically provided.

19 B. The Director shall determine whether development, platting, or alteration of
20 vegetation, trees, or habitat is subject to this ~~((e))~~ Chapter 25.09. The Director may also consult
21 with other City departments and state and federal agencies as necessary to obtain additional
22 technical and environmental review assistance.

23 C. The Director shall review and analyze all applications for all permits or approvals
24 subject to this ~~((e))~~ Chapter 25.09 that are issued by the Department of Planning and
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1 Development. Such applications shall be approved only after the Director is satisfied the
2 applications comply with this ((e))Chapter 25.09.

3 D. Every other City department issuing a permit or other approval for development on
4 parcels containing an environmentally critical area or its buffer or for altering vegetation, trees,
5 or habitat in the areas set out in subsection 25.09.015.B shall require the use of best management
6 practices to prevent impacts to environmentally critical areas and their buffers and to meet the
7 intent of this ((e))Chapter 25.09. Departments shall require mitigation to address unavoidable
8 impacts. All such City departments shall maintain records documenting compliance with this
9 subsection 25.09.017.D.

10 * * *

11 F. The provisions of Section 23.88.020 apply to a decision by the Director as to the
12 meaning, application, or intent of any provision of this ((e))Chapter 25.09. The provisions of
13 Section 23.88.020 are the exclusive administrative remedy for any determination by the Director
14 under Chapter 25.09, except as otherwise specifically provided. Other administrative appeal
15 provisions set out in Title 23 do not apply to decisions under this ((e))Chapter 25.09, except as
16 specifically provided.

17 Section 9. Section 25.09.020 of the Seattle Municipal Code, last amended by Ordinance
18 124105, is amended as follows:

19 **25.09.020 Environmentally critical areas definitions**

20 The following are environmentally critical areas designated by this Chapter 25.09:
21 geologic hazard areas, steep slope areas, flood-prone areas, wetlands, fish and wildlife habitat
22 conservation areas, and abandoned landfills.

23 * * *

24 B. Flood-prone ((A))areas. Flood-prone areas are those areas that would likely be
25 covered with or carry water as a result of a ((one hundred (100))) year flood event, or that



1 would have a one percent (~~((1%))~~) or greater chance of being covered with or of carrying water in
2 any given year based on current circumstances or maximum development permitted under
3 existing zoning. This includes areas (~~((identified))~~) defined as ((flood-prone on the Seattle
4 Floodplain Development Ordinance or on FEMA maps, and streams identified by the
5 Washington State Department of Fisheries Catalog of Washington Streams,)) areas of special
6 flood hazard in Section 25.06.030 and areas ((with stormwater runoff problems known to Seattle
7 Public Utilities)) mapped by Seattle Public Utilities.

8 C. Wetlands. Wetlands are those areas that are inundated or saturated by surface water or
9 ground water at a frequency and duration sufficient to support, and that under normal
10 circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil
11 conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do
12 not include those artificial wetlands intentionally created from nonwetland sites, including, but
13 not limited to, irrigation and stormwater ditches, grass-lined swales, canals, detention facilities,
14 wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created
15 after July 1, 1990, that were unintentionally created as a result of the construction of a road,
16 street, or highway. Wetlands include those artificial wetlands intentionally created from
17 nonwetland areas to mitigate conversion of wetlands. (~~((The method for delineating wetlands~~
18 ~~shall follow the "Washington State Wetlands Identification and Delineation Manual" as adopted~~
19 ~~by the State Department of Ecology (Publication #96-94.))~~) Identification of wetlands and
20 delineation of their boundaries pursuant to this Chapter 25.09 shall be done in accordance with
21 the approved federal wetland delineation manual and applicable regional supplements.

22 * * *

23 D. Fish and (~~((W))~~) wildlife ((H)) habitat ((C)) conservation ((A)) areas. The following are
24 fish and wildlife habitat conservation areas:
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1 1. Areas mapped by the Washington State Department of Fish and Wildlife
2 (~~((("WDFW"))~~)(WDFW) as urban natural open space habitat areas.

3 2. Areas designated by WDFW as priority habitats and species areas, including
4 native eel grass beds, kelp beds, and recreational shellfish areas.

5 3. Corridors connecting priority habitats and species areas or habitat areas for
6 species of local importance meeting one of the following criteria:

7 a. WDFW or the Department's species habitat management plan identifies
8 the parcel as part of a corridor connecting habitat areas for priority species or species of local
9 importance;

10 b. the parcel is adjacent to or connects parcels containing priority species
11 or species of local importance and the Director determines that the parcel is part of a wildlife
12 corridor based on information provided by a qualified wildlife biologist or;

13 c. the parcel provides fish passage between fish habitat in (~~(Type 1-~~
14 ~~5))Type S, F, Np and Ns~~ waters per WAC 222-16-030 and 222-16-031 upstream and
15 downstream of the parcel, whether that passage is in riparian watercourses, pipes or culverts.

16 4. Areas that provide habitat for species of local importance.

17 5.

18 a. Riparian corridors, which are the riparian watercourse and the riparian
19 management area. The riparian watercourse is the watercourse of (~~(Type 2-5))Type F, Np and Ns~~
20 waters defined in WAC 222-16-030 and 222-16-031 that have fish or wildlife habitat. Water in
21 surface water ditches and stormwater conveyances, pipes, culverts, flow control facilities and
22 water quality facilities are not regulated as riparian watercourses. The riparian management area
23 is the area within (~~((one hundred feet (-)))100((-)))~~ feet measured horizontally landward from the
24 top of each bank of the watercourse, or from the ordinary high water mark of the watercourse as
25 surveyed in the field, if the top of the bank cannot be determined. In watercourses with braided
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channels or alluvial fans, the ordinary high water mark shall be determined so as to include the entire stream feature.

b. When a pipe or culvert connecting ~~((Type 1-5))~~ Type S, F, Np and Ns waters per WAC 222-16-030 and 222-16-031 that have fish habitat downstream and upstream from the pipe or culvert is daylighted, the waters formerly in the pipe or culvert will be regulated as a riparian watercourse, and the area adjacent to that watercourse will be regulated as a riparian management area, as defined in subsection 25.09.020.D.5. This subsection 25.09.020.D.5.b does not apply when the pipe or culvert is removed to provide a publicly-owned facility designed primarily for water quality treatment, flow control or stormwater conveyance.

* * *

Section 10. Section 25.09.030 of the Seattle Municipal Code, last amended by Ordinance 122738, is amended as follows:

25.09.030 Location of environmentally critical areas and buffers~~((:))~~

A. Environmentally critical areas are defined in Section 25.09.020, and buffers are described in Sections 25.09.160~~((:))~~ and 25.09.180~~((, and 25.09.200B))~~. Environmentally critical areas are mapped whenever possible. These maps are advisory ~~((B))~~ except for the maps adopted as designations for geologically hazardous areas in subsections 25.09.020.A.5, 25.09.020.A.6, and 25.09.020.A.7, the FEMA maps showing areas of special flood hazard defined in subsection 25.06.030.B, and areas mapped or designated by the Washington State Department of Fish and Wildlife (WDFW) in subsections 25.09.020.D.1 and 25.09.020.D.2~~((these maps are advisory))~~.

The Director may update or amend the maps by Director's Rule.

B. Determination of critical area or buffer location

1. The Director shall determine whether a parcel contains an environmentally critical area or buffer before other provisions of this ~~((e))~~ Chapter 25.09 are applied to a development proposal.

1 2. If an application for development is proposed on a site that the Director
2 believes contains a critical area or critical area buffer, an applicant may request a determination
3 that a specific parcel of property does not contain a critical area or critical area buffer or that the
4 critical area or buffer is located differently, including whether a critical area map should be
5 changed, by applying for an exemption pursuant to subsection 25.09.045.D.1. In making the
6 exemption determination the Director may consider the factors set out in subsection
7 25.09.030.B.4.

8 3. If no application for development is proposed, a request for a formal
9 determination whether a specific parcel contains a critical area or critical area buffer or of the
10 location of a critical area or critical area buffer, including whether a critical area map should be
11 amended, shall be made by applying for an interpretation pursuant to the provisions of Section
12 23.88.020. Interpretation decisions are not binding on subsequent applications for development if
13 the facts supporting the interpretation or the designation criteria for a critical area or critical area
14 buffer have changed. In making the interpretation the Director may consider the factors set out
15 in subsection 25.09.030.B.4.

16 4. Factors considered. In determining whether a parcel contains an
17 environmentally critical area or buffer, the Director may consider the environmentally critical
18 areas maps, site surveys, topographic maps, technical environmental analysis, and any other
19 information the Director determines necessary. In determining whether development is subject to
20 regulation under Section 25.09.110, the Director may consider only whether the development
21 will occur within an area delineated pursuant to subsection 25.09.020, A.5.

22 Section 11. Section 25.09.040 of the Seattle Municipal Code, last amended by Ordinance
23 122050, is amended as follows:

24 **25.09.040 Permits and approvals required((?))**
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1 A. Prior to undertaking development or platting on a parcel containing an
2 environmentally critical area or buffer, the ~~((person responsible))~~ applicant shall (1) submit an
3 application complying with the provisions of Section 25.09.330, unless the ~~((person))~~ applicant
4 ~~((complies with))~~ applies for an approval under the provisions of Section 25.09.045, 25.09.055, or
5 25.09.320, and (2) obtain the Director's approval of the application. An application that includes
6 a request for an exemption under subsection 25.09.045.D, or Sections 25.09.055 or 25.09.320,
7 shall include a request for modification to the submittal requirements of Section 25.09.330.

8 B. Prior to undertaking actions under Section 25.09.045, 25.09.055, or subsection
9 25.09.200.A.4, the ~~((person responsible))~~ applicant shall ~~((comply with provisions of))~~ obtain the
10 Director's approval of the application under the applicable section. The applicant shall also
11 obtain approval of a modification to the submittal requirements of Section 25.09.330 as part of
12 compliance with subsection 25.09.045.D or Sections 25.09.055 or 25.09.320.

13 C. Prior to altering vegetation, trees, or habitat protected by this ~~((e))~~ Chapter 25.09 the
14 person responsible shall comply with the provisions of Section 25.09.320, unless that person
15 complies with Section 25.09.045 or 25.09.055.

16 Section 12. Section 25.09.045 of the Seattle Municipal Code, last amended by Ordinance
17 124105, is amended as follows:

18 **25.09.045 Exemptions**

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20 **D. Development not within an environmentally critical area**

21 1. Development on property the Director determines is not within an
22 environmentally critical area or buffer is exempt from the provisions of this Chapter 25.09.

23 2. Development that does not temporarily or permanently encroach within, alter,
24 or increase the impact to the environmentally critical area or buffer on the parcel where the
25 development occurs is exempt from the provisions of this ~~((e))~~ Chapter 25.09; if existing
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development that encroaches within or impacts the environmentally critical area or buffer is removed, then new development that encroaches within, alters or impacts the environmentally critical area or buffer is not exempt.

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G. Rebuilding or replacing structures that are destroyed by an act of nature is exempt from the provisions of this ~~((e))~~Chapter 25.09, provided that action toward the rebuilding or replacement is commenced within one ~~((1))~~year of the act of nature, that the rebuilding or replacement is diligently pursued, and that the new construction or related activity does not further encroach into, or increase the impact to, or further alter an environmentally critical area or buffer and complies with~~((restrictions on flood hazard areas reconstruction))~~ applicable requirements of Chapter 25.06, Floodplain Development.

H.

1. The activities identified in subsection 25.09.045.H.3 below are exempt from the provisions of this Chapter 25.09 ~~((when))~~if the applicant demonstrates:

- a. The work is not a prerequisite to other development;
- b. No practicable alternative to the work with less impact on the environmentally critical area or buffer exists; and
- c. The work does not pose an unreasonable threat to the public health, safety or welfare, or to the environment, on or off the ~~((parcel))~~property.

2. The Director's decision shall:

- a. include the approved location and limits of the work; and
- b. require specific mitigation measures for impacts to all environmentally critical areas and their buffers before, during, and after construction; and
- c. require special inspection at the Director's discretion.

3. The provisions of this subsection 25.09.045.H apply to the following activities:



1 a. Relocation of electric facilities, lines, equipment or appurtenances, not
2 including substations, with an associated voltage of 55,000 volts or less only when required by a
3 governmental agency((5));

4 b. Relocation of natural gas, cable communications, gas, telephone
5 facilities, and public utility lines, pipes, mains, equipment or appurtenances only when required
6 by a governmental agency((5));

7 c. Installation or construction in improved public road rights-of-way, and
8 replacement, operation or alteration, of all electric facilities, lines, equipment or appurtenances,
9 not including substations, with an associated voltage of 55,000 volts or less((5));

10 d. Installation or construction in improved public road rights-of-way, and
11 replacement, operation, repair or alteration of all natural gas, cable communications, telephone
12 facilities, and public utility lines, pipes, mains, equipment or appurtenances((5));

13 e. Public or private projects designed exclusively to enhance ecological
14 function in the Shoreline District or to enhance riparian corridors, and wetlands and their buffers,
15 including stormwater-related functions, that require either a Hydraulic Project Approval from the
16 Washington Department of Fish and Wildlife or a Section 404 permit under the federal Clean
17 Water Act from the United States Army Corps of Engineers, or any project funded by the
18 Aquatic Habitat Matching Grant program, established by City Council Resolution 30719, and

19 f. Public projects ((where))if the intrusion into the environmentally
20 critical area or buffer benefits the public, such as trails providing access to a creek or wetland
21 area, when located and designed to keep environmental disturbance to a minimum. The applicant
22 shall protect vegetation and trees pursuant to a tree and vegetation plan consistent with best
23 management practices. The plan shall be prepared by a qualified expert with experience related
24 to the type of environmentally critical area or buffer where work will occur. In landslide-prone
25 areas ((of))the plan shall also be approved by a geotechnical engineer or geologist licensed in the
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1 State of Washington with experience in analyzing geological hazards related to slope stability
2 and vegetation removal on steep slopes.

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4 K. Site investigative work. Minor site investigative work, such as surveys, soil logs,
5 percolation tests, and other related activities, if such activities do not exceed grading that is
6 exempt under the Grading Code, Chapter 22.170. In every case, impacts to the environmentally
7 critical area and buffer shall be minimized, and disturbed areas shall be immediately restored.

8 Section 13. Section 25.09.055 of the Seattle Municipal Code, last amended by Ordinance
9 122738, is amended as follows:

10 **25.09.055 Small project waiver((τ))**

11 A. The Director may approve new accessory structures or additions to existing structures
12 in the environmentally critical areas and buffers listed in subsection 25.09.055.A.2, ((provided
13 that))if no construction occurs over or in a water course, water body, or wetland, ((when))and if
14 the applicant demonstrates the proposal meets the following criteria:

15 1. The new accessory structure or addition to an existing structure is on a lot that
16 has been in existence as a legal building site prior to October 31, 1992.

17 2. The development does not exceed ((one hundred and fifty-))150((τ)) square
18 feet in riparian management areas or in wetland buffers, ((three hundred-))300((τ)) square feet in
19 steep slope areas or buffers, or ((seven hundred fifty-))750((τ)) square feet in landslide-prone
20 (except steep slope)((-liquefaction-prone, flood-prone, and abandoned land fill)) areas, all
21 calculated cumulatively from October 31, 1992. When the new accessory structure or addition to
22 an existing structure is on a lot that is or has been held in common ownership with a contiguous
23 lot and the lots are or have been used for a single principal use or for a principal use and
24 accessory use, the limitation applies to the entire site.

3. It is not possible to build the accessory structure or addition to an existing structure for the intended purpose out of the environmentally critical area or buffer.

4. The location of the accessory structure or addition to an existing structure keeps impact on the environmentally critical area and buffer to a minimum.

5. In landslide-prone areas the Director may require a soils report prepared by a qualified geotechnical engineer or geologist licensed by the State of Washington demonstrates that it is safe to construct the new accessory structure or the addition to an existing structure.

6. In steep slope areas or buffers, and in all other landslide-prone areas, the new accessory structure or addition to an existing structure subject to waiver under this Section 25.09.055 shall not include retaining walls or drainage features.

B. Director's ~~((D))~~decision~~((:))~~

1. The Director shall require the use of fencing with a highly durable protective barrier during the construction to protect the remainder of the environmentally critical area and/or buffer.

2. The Director shall require planting native vegetation in an area equal in size to the area of any native vegetation in a riparian corridor, wetland buffer, steep slope, or steep slope buffer that is removed or adversely impacted by the development. Any invasive species shall be removed from the planting area. The planting area shall be on site and, whenever possible, in the same environmentally critical area or buffer. When this is not possible, the Director ~~((may))~~shall authorize all or a portion of the planting to be outside the environmentally critical area or buffer or on another parcel, when the Director determines this will mitigate the impact.

3. The Director ~~((may))~~shall require additional measures to protect the remainder of the environmentally critical area and/or buffer.

Section 14. Section 25.09.060 of the Seattle Municipal Code, last amended by Ordinance 123106, is amended as follows:

25.09.060 General development standards

The following general development standards apply to development on parcels containing environmentally critical areas or their buffers, except as specifically provided in this ((e))Chapter 25.09:

* * *

E. All site clearing on the lot that may impact environmentally critical areas or buffers shall be carried out in stages just prior to construction, and cleared areas shall be kept to the minimum for construction. Revegetation shall occur after the particular phase of construction is completed. When required by the Director, a tree and revegetation plan shall establish a staged vegetation removal and replacement program that keeps the amount of exposed soil during and after construction to a minimum. In ((driver))drier months, temporary surface irrigation or temporary installation of intermediate plantings may be required until weather or seasonal conditions permit installation of the permanent plantings.

* * *

Section 15. Section 25.09.120 of the Seattle Municipal Code, last amended by Ordinance 123106, is amended as follows:

25.09.120 Development standards for flood-prone areas

~~((A. Development is prohibited within the "floodway" of flood-prone areas. Permitted development within flood-prone areas lying outside the floodway shall not contribute to increased downstream flow of floodwaters and shall comply with the provisions of Chapter 25.06, Seattle Floodplain Development Ordinance.~~

~~B. Drainage Control Plan. If the site is mapped or determined to be flood-prone, the Director may require a drainage control plan to be submitted with the permit application showing the flood-prone area, the tributary watershed, and all drainage features, to describe the existing situation and proposed modifications to the drainage system. If required, the drainage-~~



control plan shall provide for control of water quality and quantity in compliance with Chapters 22.800 through 22.808, the Stormwater Code, Chapter 25.06, Seattle Floodplain Development Ordinance, and any other subsequent applicable flood control codes or ordinances to protect the public interest and prevent harm.

C. ~~Elevation Above Base Flood Level.~~ The lowest floor elevation of any structure located in a flood-prone area shall be no less than two feet (2') above the one-hundred (100) year flood elevation.))

All development shall meet the applicable requirements of Chapter 25.06, Seattle Floodplain Development Ordinance; Chapter 22.100, Seattle Building Code; Chapter 22.150, Seattle Residential Code; Chapter 22.170, Seattle Grading Code; and Chapter 22.800, Seattle Stormwater Code.

Section 16. Section 25.09.160 of the Seattle Municipal Code, last amended by Ordinance 123106, is amended as follows:

25.09.160 Development standards for wetlands

A. Wetlands are rated according to the Washington State Wetland Rating System for Western Washington (Ecology Publication #04-06-25). Illegal grading, filling, draining, or other development will not result in a change to that wetland's rating. Wetlands constructed for mitigation or replacement purposes are subject to the provisions of this ((e))Chapter 25.09.

B. Impacts to ((W))wetlands((-))

1. Development, including but not limited to grading, filling, or draining, is prohibited within or over:

a. Category I, II or III wetlands greater than ((one hundred (-))100((-)) square feet;

b. Category IV wetlands ((one thousand (-))1,000((-)) square feet or greater;



1 c. A wetland of any category or size that is part of a larger wetland system
2 or abuts any ~~((Type 1-5))~~ Type S, F, Np and Ns water per WAC 222-16-030 and 031.

3 2. Development may occur within or over Category IV wetlands less than ~~((one~~
4 ~~thousand-))~~ 1,000 ~~(())~~ square feet, other than those wetlands described in subsection
5 25.09.160.B.1.c, in accordance with subsection 25.09.160.C.3.

6 3. When development is authorized on a parcel containing a wetland:
7 a. ~~((All on or offsite runoff shall be routed away from the wetland and~~
8 ~~wetland buffer))~~ Development shall comply with subsection 22.805.020.G and all other
9 applicable sections of the Storm Water Code; and

10 b. Direct lighting shall be directed away from the wetland and its buffer.

11 4. ~~((Removal of, clearing, or))~~ In a wetland of any category or size, any action
12 detrimental to habitat, trees or vegetation ((in wetlands)), including but not limited to clearing or
13 removal, is prohibited, except as provided in Sections 23.60A.190, 25.09.045, 25.09.300, and
14 25.09.320.

15 C. Wetland ~~((B))~~ buffers and ~~((M))~~ mitigation ~~(())~~

16 * * *

17 4. Buffer ~~((V))~~ vegetation ~~(())~~

18 a. In the wetland buffer, ((Removal of, clearing, or)) any action
19 detrimental to habitat, trees or vegetation ((in the wetland buffer)), including but not limited to
20 clearing or removal, is prohibited, except as provided in subsection 25.09.160.D and in Sections
21 23.60A.190, 25.09.055, 25.09.300, and ((Section)) 25.09.320.

22 b. Invasive plants and noxious weeds may be removed by hand. No
23 machines or chemical removal shall be permitted without the Director's approval.

24 * * *

25 E. Avoidance and ~~((M))~~ mitigation ~~((S))~~ standards ~~(())~~

1 1. If an exception to the standards of this Section 25.09.160 is approved under
2 Section 25.09.300, the Director shall require application of the following ((The))standards for
3 wetland mitigation ((shall be applied))in following order of priority:

4 a. avoid the impact to the extent practicable by not taking all or part of an
5 action;

6 b. keep the impact to a minimum by limiting the degree or magnitude of
7 the action and its implementation, and by taking affirmative actions to mitigate the impact over
8 time; and

9 c. mitigate unavoidable impacts to the designated uses of a wetland by
10 replacement, enhancement, or other approved compensation methods.

11 2. Mitigation for grading, filling, or draining wetlands shall achieve the
12 equivalent or better biologic functions of the existing wetland. Mitigation plans shall be
13 consistent with ~~((the Department of Ecology Guidelines for Developing Freshwater Wetlands~~
14 ~~Mitigation Plans and Proposals, 1994 (#94-29)))~~ Washington State Department of Ecology
15 Publication #06-06-011b, Wetland Mitigation in Washington State – Part 2: Developing
16 Mitigation Plans (Version 1), or the most current Department of Ecology publication addressing
17 wetland mitigation.

18 * * *

19 6. If the applicant demonstrates by clear and convincing evidence that the
20 avoidance and mitigation standards required in subsection 25.09.160.E.5.a will deprive the
21 applicant of reasonable use of the applicant's property, the Director may waive or modify the
22 standards to the extent necessary to allow reasonable use as part of the exception under Section
23 25.09.300. Notwithstanding such demonstration, the Director may deny the waiver if the
24 Director determines that not applying these standards would cause significant injury to occupiers
25 of the land, to other properties, to public resources, or to the environment.



* * *

Section 17. Section 25.09.180 of the Seattle Municipal Code, last amended by Ordinance 123106, is amended as follows:

25.09.180 Development standards for steep slope areas

A. This ~~((s))~~Section 25.09.180 and Section 25.09.080 apply to parcels containing a steep slope area or buffer.

B. Impacts on ~~((S))~~steep ~~((S))~~slope ~~((A))~~areas~~((r))~~

1. Development is prohibited on steep slope areas, unless the applicant demonstrates that the provisions of subsections 25.09.180.B.2 or 25.09.180.E apply.

2. Provided that all the provisions of this Chapter 25.09 and all applicable provisions of Title 23 and Chapters 22.800 through 22.808 are met, subsection 25.09.180.B.1 does not apply when the applicant demonstrates the development meets one of the following criteria. In determining whether these criteria are met, the Director may require a geotechnical report to verify site conditions and to evaluate the impacts of the development in the steep slope area and shall require such a report for criteria in subsections 25.09.180.B.2.c and 25.09.180.B.2.d. The geotechnical report is subject to the provisions for third party review in ~~((S))~~subsection 25.09.080.C.

a. Development is located where existing development is located, if the impact on the steep slope area is not altered or increased; or

b. Development is located on steep slope areas that have been created through previous legal grading activities, including rockeries or retaining walls resulting from rights of way improvements, if no adverse impact on the steep slope area will result; or

c. Development is located on steep slope areas that are less than 20 feet in vertical rise and that are 30 feet or more from other steep slope areas, if no adverse impact on the steep slope area will result; or



d. Development is located on steep slope areas where the Director determines that application of subsection 25.09.180.B.1 would prevent necessary stabilization of a landslide-prone area.

3. Clearing vegetation or any type of vegetation and site restoration management authorized under this Chapter 25.09 is not "development" for purposes of applying any of the provisions of subsection 25.09.180.B.2.

* * *

Section 18. Section 25.09.200 of the Seattle Municipal Code, last amended by Ordinance 124105, is amended as follows:

25.09.200 Development standards for fish and wildlife habitat conservation areas

A. Development standards for parcels with riparian corridors

1.

a. The provisions of this subsection 25.09.200.A apply to all development on parcels containing riparian corridors as defined in ~~((S))~~subsection 25.09.020.D.5. In addition, the provisions of subsection 25.09.200.C apply to these parcels, except subsection 25.09.200.C.2 with respect to fish. In the event of an irreconcilable conflict between the provisions of subsection 25.09.200.C and this subsection 25.09.200.A, the most restrictive provision applies.

b. It is the long term goal of the City to restore the City's riparian corridors and to protect salmon passage in such corridors where scientifically justified. The City has determined that best available science supports protecting these riparian corridors as described in this ~~((e))~~Chapter 25.09. Where past development has encroached into riparian corridors, redevelopment shall be regulated subject to the provisions in Section 25.09.045.

2. Riparian ~~((W))~~watercourse

a. Development is prohibited within or over the watercourse, except as provided in this subsection 25.09.200.A.2.a or subsection ~~((23))~~25.09.200.A.2.b. If no other

access is available to the property, the Director may approve access over the watercourse, provided that it maintains the natural channel and floodway of the watercourse and that disturbance of the riparian management area is kept to a minimum.

b. On Haller and Bitter Lakes, piers are regulated pursuant to the development standards for similar structures in the Shoreline District, Chapter 23.60A, ~~((Part X VI))~~ Subchapter XV, The Urban Residential Environment, Sections 23.60A.152, and 23.60A.187. If a pier is allowed, access to it through the riparian management area is also allowed, provided the impact on the naturally functioning condition of the riparian management area from the pier's location, method of construction, and construction materials is kept to a minimum.

c. In the riparian watercourse ~~((Removal of, clearing, or))~~ any action detrimental to habitat, trees or vegetation ~~((in the riparian watercourse))~~, including but not limited to clearing or removal, is prohibited, except as provided in Section 25.09.320.

3. Riparian ~~((M))~~ management ~~((A))~~ area ~~((:))~~

a. The riparian management area is defined in subsection 25.09.020.D.5. Existing public or private streets are excluded from the regulations for the riparian management area ~~((, provided that if))~~ unless the provisions of Chapters 22.800 through 22.808, the Stormwater Code apply, in which case the Director shall require adequate stormwater detention to prevent harm from the street to habitat on the parcel and downstream and to keep degradation of water quality for habitat to a minimum.

b. Activities in the riparian management area ~~((:))~~

1) Development is prohibited in the riparian management area, except to provide access to development approved under subsection 25.09.200.A.2 and except under subsections 22.09.200.A.3.b.2, 25.09.200.A.3.c, and 25.09.200.A.3.d.

2) In the riparian management area ~~((Removal of, clearing, or))~~ any action detrimental to habitat, trees or vegetation ~~((in the riparian management area))~~.

1 including but not limited to clearing or removal, is prohibited, except as provided in subsection
2 25.09.200.A.3.c and Section 25.09.320.

3 * * *

4 d. In addition to subsections 25.09.200.A.3.b.2 and 25.09.200.A.3.c,
5 development is allowed in the riparian management area on lots existing prior to May 9, 2006 if
6 the applicant demonstrates that:

7 1) the development is in the limited riparian development area,
8 which is the area in the riparian corridor but outside of the watercourse and more than 75 feet
9 from the top of the watercourse bank for Type F ~~((2 and 3))~~ waters with anadromous fish present
10 for any part of the year, more than 50 feet from the top of the watercourse bank for Type F ~~((2~~
11 ~~and 3))~~ waters where anadromous fish are not present for any part of the year and more than 50
12 feet from the top of the watercourse bank for Type Np and Ns ~~((4 and 5))~~ waters;

13 * * *

14 4. Daylighting ~~((W))~~water in ~~((P))~~pipes and ~~((C))~~culverts~~((r))~~

15 a. Pursuant to Section 25.09.200.D, the Director may require daylighting
16 pipes and culverts that meet the definition of fish and wildlife corridors in Section
17 25.09.020.D.3.c.

18 b. The City encourages daylighting pipes and culverts connecting ~~((Type~~
19 ~~1-5))~~ Type S, F, Np and Ns waters that have fish habitat downstream and upstream from the pipe
20 or culvert, and the Director is authorized to modify development standards as set out in
21 subsection 25.09.200.A.4.c below when the applicant submits a plan for daylighting such a pipe
22 or culvert that meets the following criteria:

23 * * *

24 C. Based on information provided by a qualified wildlife biologist, the Director may
25 condition development on parcels containing wildlife habitat or corridors defined in subsection
26

25.09.020.D.3 to protect fish or wildlife habitat corridors. Conditions may include, but are not limited to:

* * *

5. Preservation of the ability for fish to pass between fish habitat in ~~((Type I-5))~~ Type S, F, Np and Ns waters upstream and downstream of the parcel. The application requirements and general conditions of this ~~((e))~~ Chapter 25.09, Sections 25.09.330 and 25.09.060, do not apply if the person responsible for development of the parcel has either a Hydraulic Project Approval from the Washington Department of Fish and Wildlife or a Section 404 permit under the federal Clean Water Act from the United States Army Corps of Engineers. Nothing in this subsection 25.09.200.C alters the rights of the owner of the pipe or culvert, if that person is not an applicant for a permit.

* * *

D. Designating ~~((S))~~ species of ~~((L))~~ local ~~((I))~~ importance and their ~~((H))~~ habitat

* * *

Section 19. Section 25.09.260 of the Seattle Municipal Code, last amended by Ordinance 124105, is amended as follows:

25.09.260 Environmentally critical areas administrative conditional use

A. ~~((When the))~~ Application procedure

1. An application for an environmentally critical areas conditional use may be submitted under either of the following circumstances:

a. If an applicant demonstrates it is not practicable to comply with the requirements of subsection 25.09.240.B considering the parcel as a whole, the applicant may apply for an administrative conditional use permit, authorized under Section 23.42.042, under this Section 25.09.260 to allow the Director to count environmentally critical areas and their

1 buffers that would otherwise be excluded in calculating the maximum number of lots and units
2 allowed on the parcel under subsection 25.09.240.E.

3 b. An applicant may also apply for an administrative conditional use
4 permit to allow the Director to approve smaller than required lot sizes and yards, and/or more
5 than one dwelling unit per lot.

6 2. If an administrative conditional use application includes an application to
7 authorize development in a critical area or buffer, then the application is not required to include
8 an application for the variances allowed under subsections 25.09.180.E or Section 25.09.280.

9 B. Standards. The ~~((Director may approve an administrative conditional use for smaller~~
10 ~~than required lot sizes and yards, and/or more than one dwelling unit per lot if the))~~ applicant
11 shall demonstrate((s)) that the proposal meets the following((standards)):

12 1. Environmental impacts on critical areas

- 13 a. No development is in a riparian corridor, wetland, or wetland buffer.
14 b. No riparian management area or wetland buffer is reduced.
15 c. No development is on a steep slope area or its buffer unless the
16 property being divided or, if no property is being divided, the property that is the subject of the
17 administrative conditional use permit is predominantly characterized by steep slope areas, or
18 unless approved by the Director under ~~((S))~~ subsections 25.09.180.B.2.a, 25.09.180.B.2.b, or
19 25.09.180.B.2.c.

20 ~~((C))~~1) The preference is to cluster units away from steep slope
21 areas and buffers.

22 ~~((C))~~2) The Director shall require clear and convincing evidence
23 that the provisions of this subsection 25.09.260.B are met if units are clustered on steep slope
24 areas and steep slope area buffers with these characteristics:



1 ((f))a) a wetland over 1,500 square feet in size or a
2 watercourse designated part of a riparian corridor; or

3 ((f))b) an undeveloped area over 5 acres characterized by
4 steep slopes; or

5 ((f))c) areas designated by the Washington Department of
6 Fish and Wildlife as urban natural open space habitat areas with significant tree cover providing
7 valuable wildlife habitat.

8 * * *

9 C. Conditions((r))

10 1. In authorizing an administrative conditional use, the Director ((may))shall
11 mitigate adverse negative impacts by imposing requirements and conditions necessary to protect
12 riparian corridors, wetlands and their buffers, ((shoreline habitats and their buffers,))and steep
13 slope areas and their buffers, and may impose additional conditions to protect other properties in
14 the zone or vicinity in which the property is located.

15 2. In addition to any conditions imposed under subsection 25.09.260.C.1, the
16 following conditions apply to all administrative conditional uses approved under this
17 ((sub))Section 25.09.260:

18 a. Replacement and establishment of native vegetation shall be required
19 where it is not possible to save trees or vegetation.

20 b. Where new lots are created, the following standards apply: ((provisions
21 of Section 23.22.062, Unit lot subdivisions, or Section 23.24.045, Unit lot subdivisions, apply,
22 regardless of whether the proposal is a unit lot subdivision, so that subsequent development on a
23 single lot does not result in the development standards of this chapter being exceeded for the
24 short subdivision or subdivision as a whole.))



1 1) The development as a whole shall meet development standards
2 under Title 23 and this Chapter 25.09 applicable at the time the application is vested.

3 2) If new lots are created under Sections 25.09.240 and 25.09.260,
4 development on individual lots may be nonconforming as to some or all of the development
5 standards, except that private usable open space or private amenity areas for each dwelling unit
6 shall be provided on the same lot as the dwelling unit it serves.

7 3) Subsequent platting actions or additions or modifications to
8 structures may not create or increase any nonconformity of the development as a whole to this
9 Chapter 25.09, and this shall be noted on the document creating the new lots that is recorded
10 with the Director of the King County Department of Records and Elections.

11 4) Access easements and joint use and maintenance agreements
12 shall be executed for use of common garage or parking areas, common open space, and other
13 similar features and be recorded with the Director of the King County Department of Records
14 and Elections.

15 5) The plat documents, as recorded with the Director of the King
16 County Department of Records and Elections, shall include a notation that each lot approved by
17 an environmentally critical areas conditional use permit is not a separate buildable lot, and that
18 additional development of the each individual lot may be limited as a result of the application of
19 development standards to the original lot.

20 * * *

21 Section 20. Section 25.09.300 of the Seattle Municipal Code, last amended by Ordinance
22 122050, is amended as follows:

23 **25.09.300 Environmentally critical area exception((?))**

24 A. Types of exceptions



1 1. General. An applicant for a City permit to develop real property that is located
2 in an environmentally critical area or buffer may apply to the Director for an exception to modify
3 environmentally critical area development standards, provided that an exception cannot be
4 applied for to allow development or to obtain development credit under subsection 25.09.240.E
5 or to relocate lot lines under Section 23.28.030. ~~((Before an application for))~~ An applicant
6 seeking relief under this ((s))Section ((will be accepted, the Director must determine))25.09.300
7 shall demonstrate that no other applicable administrative remedies in Chapter 25.09 or Title 23
8 will provide sufficient relief.

9 2. Public projects. If development in an environmentally critical area or buffer is
10 necessary to accommodate a public facility or public utility, the public facility or public utility
11 may be permitted according to the following criteria in lieu of subsections 25.09.300.C and
12 25.09.300.D:

13 a. No reasonable alternative location will accommodate the facility or
14 utility, as demonstrated by an analysis of appropriate alternative location(s) provided by the
15 applicant or the Director;

16 b. The facility or utility is located, designed, and constructed:
17 1) to avoid adverse impacts to the extent feasible by not taking all
18 or part of an action;

19 2) to minimize adverse impacts; and

20 3) to mitigate impacts to critical area disturbance to the maximum
21 extent feasible;

22 c. All requirements of subsections 25.09.300.A.1, 25.09.300.B,
23 25.09.300.E, and 25.09.300.F apply; and



d. In granting an exception to the development standards in Section 25.09.160, Wetlands, the Director shall apply the avoidance and mitigation standards in subsection 25.09.160.E when imposing any conditions.

* * *

Section 21. Section 25.09.320 of the Seattle Municipal Code, last amended by Ordinance 124105, is amended as follows:

25.09.320 Trees and vegetation

A.

1. ~~((Removing, clearing, or a))~~Any action detrimental to habitat, vegetation or trees, including but not limited to clearing or removal, is prohibited, except as provided below, within the following areas: landslide-prone critical areas, (including steep slopes), steep slope buffers, riparian corridors, wetlands, and wetland buffers.

* * *

Section 22. Section 25.09.520 of the Seattle Municipal Code, last amended by Ordinance 124105, is amended as follows:

25.09.520 Definitions

* * *

"Parcel" means a lot, unplatted property or combination thereof, whether public or private property, in the City of Seattle, including City right of way.

* * *

"Reasonable alternative location" means a location that can accommodate the proposal's objectives at the lowest level of impact to ecological function in consideration of the environmental, social and economic impacts on the public and the cost to the applicant.

* * *

Section 23.

1 A. This ordinance, except for Sections 1, 9, 12, 18, 19 and 22, shall take effect and be in
2 force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor
3 within ten days after presentation, it shall take effect as provided by Seattle Municipal Code
4 Section 1.04.020.

5 B. Sections 1, 9, 12, 18, 19 and 22 of this ordinance shall take effect and be in force on:

6 1. The date immediately after the effective date of Ordinance 124105; and after
7 that occurs,

8 2. The later of: the effective date of its approval by the Department of Ecology or
9 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within
10 ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section
11 1.04.020.



1 Passed by the City Council the ____ day of _____, 2013, and signed by
2 me in open session in authentication of its passage this
3 ____ day of _____, 2013.

4
5 _____
6 President _____ of the City Council

7
8 Approved by me this ____ day of _____, 2013.

9
10 _____
11 Michael McGinn, Mayor

12
13 Filed by me this ____ day of _____, 2013.

14
15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Planning and Development	Bill Mills 684-8738	Melissa Lawrie 684-5805

Legislation Title: An ordinance relating to environmentally critical areas, amending Sections 23.60A.156, 25.06.020, 25.06.030, 25.06.040, 25.06.050, 25.06.100, 25.06.110, 25.09.017, 25.09.020, 25.09.030, 25.09.040, 25.09.045, 25.09.055, 25.09.060, 25.09.120, 25.09.160, 25.09.180, 25.09.200, 25.09.260, 25.09.300, 25.09.320, and 25.09.520 of the Seattle Municipal Code to reconcile conflicts and discrepancies between regulations for development in floodplains in Chapter 25.06 and the regulations for flood-prone areas set forth in Chapter 25.09, and to clarify language and make minor amendments to the Regulations for Environmentally Critical Areas.

Summary of the Legislation: The proposal would amend the Seattle Floodplain Development Ordinance and the Seattle Regulations for Environmentally Critical Areas, Chapters 25.06 and 25.09 of the Seattle Municipal Code, to reconcile conflicts and discrepancies between regulations for development in floodplains in Chapter 25.06 and the regulations for flood-prone areas set forth in Chapter 25.09, to clarify language in both chapters, and to make additional minor amendments to the Regulations for Environmentally Critical Areas intended to update references and improve administrative process. Since the last comprehensive amendments to the Regulations for Environmentally Critical Areas in 2006, a number of inconsistencies and minor errors in the regulations have been identified by City staff and external customers such as citizens and the development community. These issues are best addressed by proposing a collection of amendments that are small scale, with a limited scope of impact. In addition to the reconciling of Chapters 25.06 and 25.09, further amendments include correcting typographical errors and incorrect section references, updating outdated references to external documents cited in the regulations, and adding clarifications or corrections to existing code language. Several amendments are also intended to improve administrative process, particularly with respect to permitting and administrative remedies, but do not make substantive changes to the regulations.

Background: Seattle Municipal Code (SMC) Chapter 25.09, Regulations for Environmentally Critical Areas (ECA regulations), first became effective in 1992 and was first updated with significant amendments in 1995. The most recent comprehensive amendment of Chapter 25.09 occurred in 2006, with the adoption of Ordinance 122050. Ordinance 122050 was a response to RCW 36.70A.130 requiring that cities and counties planning under the Growth Management Act, including the City of Seattle, update their environmentally critical areas regulations to comply with the requirements of the Act, including the requirement in RCW 36.70A.172 to include the "best available science" (BAS) when developing policies and regulations that protect

the functions and values of critical areas. Amendments of more limited scope, primarily defining certain new types of critical areas (peat settlement-prone areas, seismic hazard areas, and volcanic hazard areas), were added in 2007 and 2008 with the adoption of Ordinances 122370 and 122738, and some further specialized amendments were added for stormwater, grading and drainage in 2009 under Ordinance 123106.

Please check one of the following:

 X **This legislation does not have any financial implications.**

 This legislation has financial implications.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
None.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
No alternatives have been identified.

e) **Is a public hearing required for this legislation?**
Yes. The City Council must hold a public hearing, to be scheduled before the Planning, Land Use, and Sustainability Committee.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
Yes. Publication of notice of the Council public hearing will be made in *The Daily Journal of Commerce* and in the City's Land Use Information Bulletin. Environmental review under the State Environmental Policy Act (SEPA) is also required for this legislation, and publication of notice of the environmental determination was made in *The Daily Journal of Commerce* and in the City's Land Use Information Bulletin on January 14, 2013.

g) **Does this legislation affect a piece of property?**
No.

h) Other Issues: None.

List attachments to the fiscal note below:

None.



City of Seattle
Office of the Mayor

August 27, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that would amend the Seattle Floodplain Development Ordinance and the Seattle Regulations for Environmentally Critical Areas, Chapters 25.06 and 25.09 of the Seattle Municipal Code. This legislation would reconcile conflicts and discrepancies between regulations for development in floodplains in Chapter 25.06 and the regulations for flood-prone areas set forth in Chapter 25.09, clarify language in both chapters, and make additional minor amendments to the Regulations for Environmentally Critical Areas intended to update references and improve administrative process.

Since the last comprehensive amendments to the Regulations for Environmentally Critical Areas in 2006, a number of inconsistencies and minor errors in the regulations have been identified by City staff and external customers such as citizens and the development community. These issues are best addressed by proposing a collection of amendments that are small scale, with a limited scope of impact. The amendments include correcting typographical errors and incorrect section references, updating external documents referenced in the regulations, and adding clarifications or corrections to existing code language. Several amendments are also intended to improve administrative process, particularly with respect to permitting and administrative remedies, but do not make substantive changes to the regulations.

Thank you for your consideration of this legislation. The proposed changes will make the Seattle Floodplain Development Ordinance and Regulations for Environmentally Critical Areas both easier to understand and easier to administer. Should you have questions, please contact Bill Mills in the Department of Planning and Development at 684-8738.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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DIRECTOR'S REPORT AND RECOMMENDATION

Environmentally Critical Areas Cleanup Amendments Ordinance

Introduction

The Department of Planning and Development (DPD) is responsible for routine maintenance of the Land Use Code and other land use control ordinances, including Seattle Municipal Code (SMC) Chapter 25.09, Regulations for Environmentally Critical Areas (ECA regulations), which became effective in 1992. The most recent comprehensive amendment of Chapter 25.09 occurred in 2006, with the adoption of Ordinance 122050. Ordinance 122050 was a response to RCW 36.70A.130 requiring that cities and counties planning under the Growth Management Act, including the City of Seattle, update their environmentally critical areas regulations to comply with the requirements of the Act, including the requirement in RCW 36.70A.172 to include the "best available science" (BAS) when developing policies and regulations that protect the functions and values of critical areas. Amendments of more limited scope, defining certain new types of critical areas (peat settlement-prone areas, seismic hazard areas, and volcanic hazard areas), were added in 2007 and 2008 with the adoption of Ordinances 122370 and 122738, and some further specialized amendments were added for stormwater, grading and drainage in 2009 under Ordinance 123106.

Since the 2006 amendments, a number of inconsistencies and minor errors in the regulations, as well as the need to update processes, have been identified by City staff and external customers such as citizens and the development community. These issues can be addressed by proposing a collection of amendments that are small scale, with a limited scope of impact. The amendments include correcting typographical errors and incorrect section references, updating external documents referenced in the regulations, and adding clarifications or corrections to existing code language. In a few instances, the changes are slightly more substantive, and in those cases the report notes how the best available science was considered. Following is a section-by-section description of the proposed amendments. Where the only changes are minor grammatical corrections to existing language or corrections of typographical errors, the descriptions are limited or omitted.

Analysis

23.60A.156

Since the new Shoreline Code incorporates the ECA regulations by reference with respect to areas within the Shoreline District, the change to subsection 23.60A.156.B is proposed to update the references to the ECA regulations in the Shoreline Code to include the current proposed legislation.

Chapter 25.06 Floodplain Development (amending 25.060.20, 25.06.030, 25.06.040, 25.06.050, 25.06.100, and 25.06.110) and Chapter 25.09, Sections 25.09.020.B, 25.09.045.G, and 25.09.120

Seattle Municipal Code Chapter 25.06 specifically regulates development in floodplains as identified through mapping by the Federal Emergency Management Agency (FEMA). Chapter 25.06 is a separate body of regulations from the ECA standards but closely related to them as part of SMC Title 25, which contains most of the city's regulations for environmental protection. The current regulations for ECA and floodplains both contain standards for development in areas prone to flooding. In addition to the federally mapped floodplains, the ECA regulations include standards for flood-prone hazard areas, which include certain mapped areas managed by Seattle Public Utilities (SPU) outside the floodplains mapped by FEMA. The proposed changes would make the standards in Chapter 25.06 applicable to flood-prone areas as defined in Chapter 25.09 that are not located in areas of special flood hazards referenced in Chapter 25.06 but have been mapped by SPU. Portions of Chapter 25.09 regulating flood-prone areas would be revised to be consistent with the standards in Chapter 25.06. Further, references to documents that identify the "areas of special flood hazard" in Chapter 25.06 are proposed to be updated to reference the most current map provided by FEMA for administration of the National Flood Insurance Program, which should eliminate the need for future Code amendments to update references to specific documents. The clarification of these regulations is consistent with FEMA standards for flood-prone areas and therefore incorporates BAS by relying on the Federal standards.

25.09.017 Administration of ECA Chapter

A new sentence is proposed to be added to subsection 25.09.017.F to clarify that a formal interpretation under Section 23.88.020 is the exclusive administrative remedy for any determination by the DPD Director under Chapter 25.09, except where specifically provided otherwise in Chapter 25.09.

25.09.020 ECA Definitions

The definition of "flood-prone areas" would be changed to clarify that these areas include the areas mapped by FEMA or identified on the Seattle Floodplain Development Ordinance maps, as well as areas mapped by SPU. A reference in the definition of "wetlands" would be changed to delete a reference to an out of date Washington State Wetlands Identification and Delineation Manual and instead reference "the approved federal wetland delineation manual and applicable regional supplements," to avoid the need for future amendments to reference a specific manual.

25.09.030 Location of environmentally critical areas and buffers

The proposed changes to subsection 25.09.030.A would clarify that most ECA maps are advisory but maps of geologically hazardous areas, FEMA maps showing areas of special flood hazard, and areas mapped or designated by the Washington State Department of Fish and Wildlife (WDFW) as Fish and Wildlife Habitat Conservation Areas are binding. Proposed changes to subsection 25.09.030.B clarify that the process for determining whether a parcel of property

contains a critical area is determined by the Director of DPD, but the Director's determination may be disputed by applying for a critical areas exemption if an application for development is proposed or, if no application for development is proposed, by requesting a formal interpretation pursuant to Section 23.88.020.

25.09.040 Permits and approvals required

The proposed changes would clarify existing DPD business practices by including specific Code language requiring that applications for ECA exemptions, small project waivers, and tree or vegetation removal include a request for modification of the submittal requirements for an application under the ECA regulations.

25.09.045 ECA Exemptions

This section includes activities and development that are determined to be exempt from the provisions of the ECA chapter. Several clarifying changes are proposed as follows:

- 1) A new subsection 25.09.045.D.1 is proposed to clarify that development on property that the DPD Director determines is not within an ECA or buffer is exempt from the ECA regulations. This is a clarification in the Code of existing DPD business practice.
- 2) An exemption in subsection 25.09.045.G allows rebuilding or replacing of structures destroyed by act of nature provided, in part, that new construction or related activity shall comply with restrictions on flood hazard area reconstruction. The language would be clarified to include applicable requirements of Chapter 25.06, regulating floodplain development.
- 3) Certain public projects and utility relocation or development are exempt under subsection 25.09.045.H. The proposed changes would add a clarification, for purposes of allowing tree and vegetation removal, that the activity must not pose an unreasonable threat to the environment, and DPD would be given authority to conduct special inspections or require conditioning of any approved vegetation removal and replanting.
- 4) A new subsection would be added to exempt minor site investigative work necessary for land use permit submittals, such as surveys or soil logs. Just as with beneficial vegetation removal and replanting, the existing regulations, in prohibiting any site disturbance in certain critical areas, have either prevented or complicated this type of reasonable activity within a critical area site.

25.09.055 Small Project Waiver

The clarifications would remove any waiver analysis for small projects from liquefaction-prone, flood-prone, and abandoned landfill ECAs. In liquefaction-prone areas and abandoned landfill areas, there are no development standards limiting development or the size of structures. In flood-prone areas, the waiver should not be applicable, as no new development is allowed. The changes would also clarify that retaining walls and drainage features in steep slope and steep slope buffer areas are not eligible for the waiver as accessory structures or additions to existing structures. This potentially substantive clarification is consistent with BAS as it already reflects

current DPD practice in administering the Code and reflects the general City of Seattle policy to limit or restrict development within ECA's. Based on BAS and experience, the impacts from retaining wall and drainage features in steep slope areas require full analysis under the usual standards for steep slope areas.

25.09.060 General development standards

The change corrects a minor misspelling.

25.09.120 Development standards for flood-prone areas

Specific standards are proposed to be deleted and, instead, a cross-reference to other applicable regulations such as the floodplain regulations in Chapter 25.06 is provided. The change does not alter applicable regulations but simply removes duplicative language.

25.09.160 Development standards for wetlands

In 25.09.160.B.3, a sentence requiring runoff to be routed away from the wetland and wetland buffer would be deleted and replaced by a cross reference to the Stormwater Code Section 25.805.020.G, which has more specific language that requires the same practices. Further, BAS supports the deletion of the requirement to route runoff away from wetlands because runoff is necessary to maintain the normal functioning of wetlands. For both wetlands and wetland buffers, the language in subsections 25.09.160.B.4 and 25.09.160.C.4 would be clarified to more specifically prohibit any action detrimental to habitat, trees or vegetation. The current language emphasizes removal or clearing only. In subsection 25.09.160.E, the language would be clarified to state that wetland avoidance and mitigation standards are applied only in conjunction with review and approval of a critical areas exception decision under Section 25.09.300, and subsection E.6 is added to specifically state that the wetland avoidance and mitigation standards themselves are only subject to waiver or modification through the exception process, by showing that their strict application would deprive an applicant of reasonable use of the applicant's property. Subsection E.2 would be clarified to reference the correct Washington Department of Ecology (DOE) publication for wetland mitigation plans and includes language that would prevent the need for continuous updating of the subsection every time the DOE publication changes or is updated.

25.09.180 Development standards for steep slope areas

A new subsection 25.09.180.B.3 would be added to clarify that clearing vegetation and replacing with new vegetation, or any type of vegetation and site restoration management, is not considered "development" within steep slopes or steep slope buffers. While the language would promote vegetation restoration, it would also prevent future argument that a site where vegetation removal and restoration has occurred should qualify as a previously "developed" site no longer subject, pursuant to subsection 25.09.180.B.2, to the general prohibitions on disturbance of steep slope areas or buffers.

25.09.200 Development standards for fish and wildlife habitat conservation areas

For both the riparian watercourse and riparian management area, the language in subsections 25.09.200.A.2.c and 25.09.200.A.3.b.2) would be clarified to more specifically prohibit any action detrimental to habitat, trees or vegetation. The current language emphasizes removal or clearing only.

25.09.260 Environmentally critical areas administrative conditional use

Subsection 25.09.260.A, which is currently a single very long sentence, would be changed to clarify that the Code allows a two-part application of the ECA conditional use. First, the ECA conditional use would be applicable to allow counting of critical areas toward the maximum number of lots allowed on a parcel, in cases where the application of the subdivision standards in Section 25.09.240 would otherwise exclude ECA areas from the calculation of land to be subdivided. Second, the ECA conditional use would be applicable to allow approval of smaller than required lot sizes and yards and/or more than one dwelling unit per lot. Further, variance analyses are not required for yard reductions or disturbance in a steep slope critical area or buffer if approval of the yard reductions or steep slope and steep slope buffer disturbance is authorized through the environmentally critical areas conditional use.

In subsection 25.09.260.B.1.c, a clarification is added to the language requiring that development remain outside of a steep slope or steep slope buffer, except where the property is predominantly characterized by steep slopes, to specify that this standard applies whether or not the property is being divided. This change reflects existing DPD business practice.

In subsection 25.09.260.C.2.b, amendments are proposed to delete language requiring application of unit lot subdivision procedures to creation of new lots through the conditional use process. Instead, new criteria are added that are now independent of unit lot regulations but still require the development as a whole to meet all applicable development standards of both the Land Use Code and ECA regulations: specifically allows development on some lots to be nonconforming to standards on those lots if the development as a whole is conforming to standards; prohibits any future actions from creating or increasing nonconformity to standards; imposes specific requirements for creation of access easements and joint use and maintenance agreements for common features such as common garages, parking, or open space; and requires approved plats to include language, similar to unit lot subdivisions, that lots approved by the environmentally critical areas conditional use process are not separate buildable lots and that additional development on these lots may be limited as a result of the application of development standards to the original lot.

25.09.300 Environmentally critical areas exception

Language is proposed that would create a separate ECA exception process for development in an ECA or buffer that is necessary to accommodate a public facility or public utility. The new criteria would substitute for the existing "reasonable use" criteria in subsection 25.09.300.C and 25.09.300.D, and would require: 1) that there be no reasonable alternative location; 2) that the

facility be designed, located and constructed to avoid or minimize adverse impacts and mitigate impacts to the extent feasible; 3) that all regulations in subsection 25.09.300 apply except subsections C and D; and 4) that the avoidance and mitigation standards for wetlands be applied when imposing any conditions.

25.09.320 Trees and vegetation

The language in subsection 25.09.320.A.1 would be clarified to more specifically prohibit any action detrimental to habitat, trees or vegetation. The current language emphasizes removal or clearing only.

25.09.520 Definitions

The proposal would clarify the definition of “parcel” to specify that the term includes public property, including City right of way, as well as private property.

A definition of the term “reasonable alternative location” is proposed to be added, similar to the definition in the new Shoreline Master Program proposed in Council Bill 117585, to clarify how to apply the criteria proposed in the new ECA exception process for a public facility or public utility, and to emphasize that the location with the lowest level of impact to ecological function must be considered.

Recommendation

The Regulations for Environmentally Critical Areas require updating to clarify their application, remove existing ambiguities and interpretive issues, maintain cross references to current regulations governing critical areas found outside of Chapter 25.09, and otherwise resolve existing conflicts and discrepancies. The substantive application of these regulations would either not be changed or would be strengthened by the proposed amendments. DPD recommends approval of the proposed changes to the critical areas regulations.