

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.