



**Legislative Department  
Seattle City Council  
Memorandum**

**Date:** March 12, 2014

**To:** Mike O'Brien, Chair  
Tim Burgess, Vice Chair  
Nick Licata, Member  
Sally Clark, Alternate  
Planning Land Use and Sustainability (PLUS) Committee

**From:** Ketil Freeman, Council Central Staff

**Subject:** Council Bill (C.B.) 117913 – Clean-up Legislation for Regulations for Environmentally Critical Areas and Flood Prone Areas

**Background**

Jurisdictions planning under the Growth Management Act are required to have a Critical Areas Ordinance (CAO) that is based on the best available science.<sup>1</sup> Generally, CAOs are intended to protect environmentally sensitive areas and the public health and safety by limiting development in areas that provide ecological function for fish and wildlife or areas that are geologically hazardous. Seattle's CAO is codified in Chapter 25.09 of the Seattle Municipal Code (SMC). Critical areas include:

- Geologic Hazard Areas and Steep Slope Areas – these areas include landslide-prone areas, liquefaction-prone areas, and areas with slopes with an incline greater than 40%;
- Flood-prone Areas;
- Wetlands;
- Fish and Wildlife Habitat Conservation Areas – these areas include certain areas mapped or designated by the Washington Department of Fish and Wildlife (WDFW), corridors connecting designated priority habitat and species areas or habitat areas for species of local importance, riparian corridors, and shoreline habitat; and
- Abandoned Land Fills.

In addition to the development regulations in the CAO, development in the floodplain is regulated by SMC Ch. 25.06, Floodplain Development.

C.B. 117913 makes minor clarifications and corrects errors in CAO and floodplain development regulations that have been identified by the Department of Planning and Development (DPD), the City Attorney's Office, citizens, and the regulated community. The PLUS Committee held a public hearing on C.B. 117913 on March 4, 2014. At the hearing Councilmember Clark requested additional information on proposed language that would establish criteria for reviewing exceptions to CAO requirements for public projects.

This memo describes the proposed exception for public projects and its intended purpose.

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<sup>1</sup> R.C.W. 36.70A.172.

## **Proposed CAO Exception for Public Projects**

The CAO contains a discretionary review process whereby an applicant for development in a critical area can request an exception to CAO development standards.<sup>2</sup> Under this process, the Director of DPD may waive or modify CAO development standards, such as physical development standards related to the location of structures, if the applicant can demonstrate that the waiver or modification is the minimum necessary to provide “reasonable use” of the property. “Reasonable use” can include another, less intensive use allowed by the underlying zoning.

A strict interpretation of this standard can be problematic for siting public facilities, including utilities. For example, Combined Sewer Overflow (CSO) facilities are uses that limit sewer overflows into bodies of water in extreme wet weather conditions. These facilities include large storage vaults and pipes that convey untreated sewage to bodies of water when the storage vaults are overwhelmed. Under a consent decree with the Department of Justice, Environmental Protection Agency, and the state Department of Ecology and as a condition of Clean Water Act compliance, the City is required to develop additional CSO facilities. Because the pipes from these facilities pass through the shoreline into a body of water, at least part of every CSO facility must be in a shoreline critical area. However, a strict interpretation of the CAO exception criteria could preclude siting of a CSO facility in a critical area because the CSO facility may not be a less intensive use allowed by the underlying zoning.

The proposed changes in C.B. 117913 clarify the exception process for public facilities by establishing criteria for granting exceptions to CAO development standards when those facilities must be located in a critical area. Proposed criteria include:

- A determination that there is no other reasonable location;
- A determination that the facility is sited to avoid, minimize, and mitigate impacts to the critical area; and
- Compliance with all other exception requirements applicable to public and private projects, including public notice requirements.

The proposed criteria are consistent with standards for mitigation sequencing that were recently incorporated into the City’s Shoreline Master Program by Ordinance 124105.

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<sup>2</sup> Seattle Municipal Code (SMC) § 25.09.300.