

Director's Report and Recommendation Environmentally Critical Areas Regulations Amendments

October 7, 2016

Policy Background and Directives

Regulations designating and protecting environmental critical areas (ECAs) are required by the Washington State Growth Management Act:

- [RCW 36.70A.170](#) requires critical areas to be protected;
- [RCW 36.70A.060\(2\)](#) requires the adoption and implementation of development regulations to protect critical areas; and
- [RCW 36.70A.172\(1\)](#) requires including best available science in developing policies and regulations to protect functions and values of critical areas.

The requirement to include best available science also require measures to conserve and protect anadromous fisheries (salmon), including the protection of habitat for all life states of anadromous fish. Additionally, the Washington State Legislature requires local jurisdictions to review and revise ECA regulations every eight years.

Proposed changes include:

- Extend protection to areas that meet the definition of Washington Department of Fish and Wildlife (WDFW) biodiversity areas and corridors (currently only areas that are mapped as WDFW biodiversity areas and corridors are protected.)
- Allow the Director to protect WDFW Priority Habitat in addition to Priority Species with measures contained in a Director's Rule.
- Include greater protection for great blue heron based on WDFW's 2012 Priority Habitat and Species guidance for great blue heron.
- Increase the buffer of Class III wetlands with moderate to high habitat function from 85 feet to 110 feet.
- Remove the City requirement for State Environmental Policy Act (SEPA) review for certain projects that are exempt from SEPA under Section 25.09.800, but are located in a critical area, and add clear and predictable regulations protecting the environmentally critical areas, including the three previous stated changes.
- Amend the Director's Rule titled State Environmental Policy Act (SEPA) Exemptions from Environmental Review Requirements When Establishing, Changing or Expanding a Use to allow vegetation management that meets the ECA requirements as a SEPA exempt activity if it meets the SEPA exemption thresholds.
- Apply standards to achieve better fit in existing neighborhoods in subdivision processes. The proposal would require area outside of the ECA to be available for utility connections and apply certain development standards based on the area of the lot outside the ECA. New houses would be required to meet the single-family lot coverage, maximum height, and yard standards based on the non-ECA area.

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

Additional changes to the regulations that provide clarity in implementing the regulations are also included in this update.

This Director’s Report summarizes the above regulatory changes and provides additional information regarding these changes. By including updated best available science in developing our ECA regulations and updating our ECA regulations to improve their effectiveness, we can better protect our critical areas and manage development in areas that are potentially hazardous. We can also enhance the urban environment by protecting wetlands, fish and wildlife habitat, riparian corridors, and other ecological resources. The health of these areas is an important indicator of the overall health and well-being of the city and region.

What are environmentally critical areas?

In 1990 the Washington State Legislature passed the Growth Management Act (GMA) requiring local governments to manage growth by designating urban growth areas, preparing comprehensive plans, and adopting development regulations, including regulations to protect environmentally critical areas.

The City of Seattle protects environmentally critical areas (ECAs) through the regulations of Chapter 25.09 of the Seattle Municipal Code (SMC). In Seattle there are five types of ECAs as defined by [RCW 36.70A.030](#): Geologic hazard areas, flood-prone areas, wetlands, fish and wildlife habitat conservation areas and abandoned landfills. Below is an explanation of each of these environmentally critical areas.

Table 1. Critical Areas
Geologic hazard areas
<i>Liquefaction-prone areas</i> Liquefaction occurs when relatively loose, cohesionless, saturated soils are temporarily transformed into a quicksand-like state, usually as a result of earthquake-induced ground shaking. Structures built on or within liquefiable soils can be more susceptible to damage if the structural design does not consider liquefaction and associated effects.
<i>Landslide-prone areas</i> Landslides present a major hazard to people and property. Identification of landslide-prone areas is important so that development can follow the grading and building standards and requirements necessary to avoid structural damage and personal injury. In some areas, the risk is so great that no development can safely occur. In Seattle, landslide-prone areas include both known and potential landslide areas. Known landslide areas are documented areas of significant movement. Potential landslide areas have been identified through studies, have signs of potential earth movement, display certain geological conditions or features, or have slopes with an incline of 40 percent or more.
<i>Steep slope erosion areas</i> Steep topography increases the risk of adverse impacts related to development activity, including impacts to adjacent properties, public rights-of-way, water bodies, and natural resources. Steep slope erosion areas are slopes with an incline of 40 percent or more; they are a subset of landslide-prone areas.

<p><i>Peat settlement-prone areas</i></p> <p>Peat settlement-prone areas contain substantial deposits of peat-rich soils that are prone to settlement. Peat-rich soils present a potential geologic hazard because they are highly compressible and prone to sinking when loaded with new structures and fill or when the groundwater table is lowered.</p>
<p><i>Seismic hazard areas</i></p> <p>In addition to liquefaction-prone areas, seismic hazard areas also include the Seattle Fault Zone, shoreline and upland areas adjacent to waterbodies at risk of tsunami inundation and seiches, a sudden oscillation in the surface of an enclosed body of water that raises water levels.</p>
<p><i>Volcanic hazard areas</i></p> <p>Volcanic hazard areas are subject to inundation by lahars (a landslide of volcanic debris) or related flooding resulting from volcanic activity on Mt. Rainier.</p>
<p>Flood-prone areas</p> <p>Flood-prone areas would likely be covered with or carry water as a result of a 100-year storm, that is, a storm that has a one-percent chance of occurring in a given year. Flood-prone areas are generally the low-lying areas in and around the floodplain of a river or stream. Development in flood-prone areas can present flooding problems on site and on adjacent properties.</p>
<p>Wetlands</p> <p>Wetlands are areas that are sufficiently inundated or saturated by surface water or ground water to support vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs and provide many valuable ecological functions, such as flood control, water quality improvement, shoreline stabilization, and habitat for fish and wildlife. Wetlands also serve as recreational and educational opportunities and contribute to the aesthetic value of our city.</p>
<p>Fish and wildlife habitat conservation areas</p>
<p><i>Riparian corridors</i></p> <p>Riparian corridors are the transition areas between land and a river or creek. This area provides a unique environment for plant and animal life and protects water quality by filtering sediment and toxins from runoff before it enters the watercourse.</p>
<p><i>Washington Department of Fish and Wildlife (WDFW) biodiversity areas and corridors</i></p> <p>WDFW identifies areas and corridors that are supportive of fish and wildlife and the habitat that supports these species.</p>
<p><i>WDFW priority habitats and species areas</i></p> <p>WDFW also maintains a list of important fish, wildlife, and habitat resources in Washington. These habitats and species are priorities for conservation, protection, and management due to their population status, sensitivity to habitat alteration, and/or recreation, commercial, or tribal importance. The list is available at http://wdfw.wa.gov/conservation/phs/list/. The ECA regulations require that development affecting these priority areas take certain measures to protect the habitat and species that may exist there.</p>
<p><i>Areas providing habitat for species of local importance</i></p> <p>The City of Seattle has a process for designating species of local importance that may or may not be included in WDFW's list. The ECA regulations outline the process and criteria for nominating a species for this designation and include provisions for protecting these areas.</p>
<p>Shoreline priority habitat. The ECA regulations apply to shoreline habitats through the new Shoreline Master Program (Chapter 23.60A of the Seattle Municipal Code, effective in June 2015), which protects these areas, as required by state law.</p>
<p>Abandoned landfills</p> <p>Areas once used as solid waste disposal sites present certain potential environmental health problems, such as the release of methane and other gases or contaminated water. In Seattle, some of these sites exist in Interbay, Genesee, Montlake, Haller Lake, West Seattle, Green Lake, Washington Park, and Judkins Park.</p>

In general, the ECA regulations apply to any development or platting activity carried out on a public or private parcel containing an ECA or its buffer. As defined in Section 25.09.520, “development” includes all components of and activities related to construction or disturbance of a site.

ECA Update Requirements

All jurisdictions in Washington State are required to periodically update their regulations for protecting critical areas to comply with the GMA requirements and include BAS in developing regulations. The last major update to the City’s ECA regulations occurred in 2006.

The proposed amendments reflect updates to the BAS for protecting wetland functions, great blue heron, and managing impervious surface. The proposal includes changes to the regulations for subdividing property with steep slopes that would better protect neighborhood character while maintaining the ability to recover development credit. The proposal would also add standards and mitigation measures to protect areas that are wildlife habitat area, but where no specific regulatory action is specified currently. Finally, the amendments also reorganize sections, clarify language and procedures, and correct typographical errors to make the Code easier for the public and City staff to use.

In addition to the proposed amendments to Chapter 25.09 of the SMC, the proposal would update Director’s Rule 5-2007 concerning Great Blue Heron Management Plans. This update reflects WDFW’s latest recommendations for protecting Great Blue Heron and their nests. Great Blue Heron are listed as a WDFW Priority Species and a species of local importance in the City of Seattle.

The City is also currently considering amendments to its Comprehensive Plan as part of a separate process that occurs once a year. The Comprehensive Plan establishes the policy basis for the City’s regulations on development on parcels containing or within ECAs. Included in this year’s proposed Comprehensive Plan amendments are changes that clarify the City’s commitment to:

1. Adopt regulations that protect life safety, property, and the ecological functions and values of ECA;
2. Include BAS in the identification and protection of ECAs; and
3. In addition to GMA requirements to protect critical areas, provide opportunities for public agencies and private individuals to improve water quality and enhance ECAs for the benefit of wildlife and people, beyond the GMA requirement to “protect critical areas.”

Summary of public participation

During nine months of public outreach, the Department of Planning and Development (DPD), the predecessor to the Seattle Department of Construction and Inspections (SDCI), staff attended a number of meetings with organizations and neighborhood groups to discuss these proposed changes.

Meeting Date	Organization
January 21, 2015	Master Builders Association
February 3, 2015	North Beacon Hill Council
February 4, 2015	Leschi Community Council
February 12, 2015	Master Builders Association
February 25, 2015	Public Meeting at City Hall
February 27, 2015	City Interdepartmental Meeting
March 31, 2015	Beacon Hill Public Forum
April 4, 2015	Seattle Parks and Recreation Mini-Summit
May 6, 2015	Urban Forestry Commission

May 12, 2015	Heron Habitat Helpers
May 28, 2015	Thornton Creek Alliance
June 25, 2015	Cedar Park Neighborhood Council
November 6, 2015	Cedar Park Neighborhood Council

Public input collected at these meetings addressed the following topics:

1. Application of subsections 25.09.045.F.3.f – Exemptions for public projects;
2. Application of Sections 25.09.240 – Short subdivisions and subdivisions;
3. Application of Section 25.09.260 – Administrative conditional uses;
4. Application of the stormwater regulations in relation to the ECA regulations;
5. Protection of great blue heron; and
6. Protection of wildlife habitat.

DPD used input from these meetings in the development of the proposed amendments. Prior to releasing this staff draft of the proposed amendments, DPD developed a summary of potential code changes that was circulated to stakeholders through the ECA listserv, distributed at public meetings, and posted on the ECA update project website. DPD has continually updated the project website with a timeline, background information, and BAS documents.

Additionally, DPD released a public review draft of the ECA regulations in September 2015. DPD received comments from ten individuals, organizations and agencies on the public draft. Additional amendments to the ECA regulations were made based on these comments, prior to publishing environmental (SEPA) review of the proposed legislation.

Analysis

Since the last update of the ECA regulations, DPD gathered input from the public and organizations, met with City staff that implement and enforce the regulations, reviewed the BAS, and conducted site visits. This work resulted in proposed code amendments that fall into three categories:

1. **Correction or clarification of existing provisions.** Based on experience administering the ECA regulations, City staff identified places where clearer language and organization would make the Code easier to understand and enforce consistently.
2. **Amendments based on BAS review.** DPD reviewed every section of the ECA regulations in light of updated BAS documents, which are available on the [project website](#). The BAS calls for changes in the provisions for wetlands, fish and wildlife habitat, and management of impervious surfaces. These changes reflect new scientific findings and recommendations.
3. **Substantive regulatory changes.** Based on the intent of the ECA regulations, scientific recommendations, and observation of developed projects, the following changes were made: increased buffer for Category III wetlands with high habitat function; modification of how heron habitat is protected within a specified distance from heron colonies, and the addition mitigation standards.

Aside from purely typographical corrections or clarifications, the following table summarizes the changes proposed in each Code section of the ECA regulations:

Table 3. Description of Code Changes		
Code Section	Proposed Change(s)	Rationale
25.09.020 Environmentally critical areas definitions; 25.09.180 Development standards for steep slope areas; and 25.09.320 Trees and vegetation	Renumbered code sections as follows: Section 25.09.020 is renumbered to Section 25.09.012; Section 25.09.180 is renumbered to 25.09.090 Section 25.09.320 is renumbered to 25.09.070	Increase the clarity of the regulations by restructuring the code sections to identify critical areas at the beginning or the ordinance and to locate related topics next to each other.
25.09.012.D.1 Environmentally critical areas definitions	Change the name of "steep slope areas" to "steep slope erosion hazard areas"	This changes makes the regulations more clear in explaining that steep slope areas are regulated because they present an erosion hazard.
	Change the name of the category of fish and wildlife habitat conservation areas that is currently named "urban natural open space habitat areas" to "biodiversity areas and corridors".	This change keeps our regulation terminology aligned with Washington Department of Fish and Wildlife terminology for areas that are protected under WDFW's Priority Habitat and Species program and that are designated critical areas.
	Include areas that meet the Washington Department of Fish and Wildlife's definition of biodiversity areas and corridors as environmentally critical areas.	<p>All other types of ECAs are defined and the areas that meet those definitions are protected as an environmentally critical area. Currently only those areas that are mapped as a biodiversity area and corridors are protected as an ECA. The proposal is to protect areas that meet the definition of biodiversity areas and corridors as well as protecting these areas that are mapped.</p> <p>In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
25.09.045 Exemptions	Clarify the requirements for maintenance and repair, and renovation and structural alterations, of existing development. (Rebuilding or replacement of structures is proposed to be addressed in a new Section 25.09.052).	Currently, the regulations for maintenance of existing development are difficult to understand.
	Clarify that the exemption for public projects in an ECA is for projects intended specifically to increase the public's enjoyment of the ECA.	The intent of this exemption is to allow public agencies to complete projects that help the public to enjoy the ECA, like a walking trail providing access to a wetland. However, the current language is not clear and could be interpreted to exempt <i>any</i> public project in an ECA if it benefits the public — such as a bus stop shelter in a creek buffer — regardless of whether that benefit is related to enjoyment of the ECA.

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		This proposed amendment is included to address subsection 25.09.908.B.2 of SEPA ¹ .
25.09.052 Rebuilding or replacing structures	This new section contains the requirements for rebuilding or replacing structures.	<p>The new section would distinguish rebuilding a structure that has been destroyed by an act of nature from voluntary replacement of a structure.</p> <p>Voluntary replacement of single family residential development within an ECA is proposed to be allowed. In the existing regulations this is not allowed.</p> <p>Replacing structures destroyed by acts of nature is currently allowed.</p> <p>The change proposed adds development standards and a clear review process for both types of replacement mentioned above. Standards and a review process allow the City to ensure that the rebuilding minimizes the impact on the functions and values of the ECA.</p>
25.09.055 Small project waiver	Remove 25.09.055 and move the provisions for small project waivers in each type of ECA to the appropriate code section containing other provisions for each type of ECA.	Because the small project waiver does not apply to all types of ECAs, it is more effective to put these provisions within each specific ECA to which small project waivers apply. This alleviates having to switch back and forth between code sections.
	Modify the provision for wetlands to remove the allowance for detached structures	<p>The proposal to remove detached structures from wetlands will increase the protection of wetlands.</p> <p>In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
	Modify this provision for riparian management areas to limit this to fences, rockeries, or similar features or temporary disturbance for installation of utility lines	<p>The proposal to modify this provision for riparian management areas would increase the protection of riparian management areas.</p> <p>In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
25.09.060 General development standards	Move the standards for pesticide, herbicide, and fertilizer use to a new section 25.09.075 and remove here.	See the row below for Section 25.09.075.
25.09.065 Standards for mitigation	Create a new section outlining specific mitigation sequencing and requirements.	Currently, certain development that has an adverse impact on an ECA requires mitigation. However, current Chapter 25.09 is often vague or silent about the order in which mitigation should occur. Therefore, included is a new section that establishes the steps in mitigation sequencing as set out in the 2007 Department of Community, Trade and Economic Development's <i>Critical Areas Assistance Handbook: Protecting Critical Areas within the Framework of the Washington Growth Management Act</i> .

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		<p>Under the proposal mitigation sequencing will be used to address all adverse impacts to critical areas and buffers in addition to other development standards.</p> <p>Additionally, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
25.09.070 Standards for vegetation and impervious surface management	Add management of impervious surface to this section. Provide additional guidance and clarity regarding vegetation management and/or how an increase in impervious surface must be mitigated.	<p>Clarify management and mitigation requirements and implement best available science regarding adding impervious surface in an area that was undeveloped and is located within an environmentally critical area such that run-off and other consequences would impact a critical area.</p> <p>Additionally, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
25.09.075 Standards for pesticide, herbicide, and fertilizer use	<p>Move standards for pesticide, herbicide and fertilizer use from the General Development Standards in Section 25.09.060 to a new section, Section 25.09.075</p> <p>Add prohibition of synthetic fertilizers within 50 feet of a wetland or riparian corridor watercourse. Require best management practices for use of organic fertilizers within 50 feet of a riparian corridor watercourse or wetland.</p>	<p>Clarify the code by adding more detail about acceptable ingredients and those that should not be used due to water quality and other impacts. Giving this topic its own heading in the code would make it easier to find.</p> <p>The current regulations do not distinguish between synthetic and organic fertilizers. The proposed amendments reflect the scientific recommendations incorporated into the updated Shoreline Master Program.</p>
25.09.080 Landslide-prone areas	Clarify that the purpose of regulations for landslide-prone areas is to allow safe and stable development.	The current code includes the term “compatible” development, which has been hard to interpret. Compatibility is already defined more clearly as part of the proposed amendments and is not specifically the purpose of the regulations for landslide-prone areas, which is safety and stability.
	Include a new subsection that provides the provisions that are currently in Section 25.09.055 for small project waivers.	See above description for Section 25.09.055.
25.09.090 Development standards for steep slope erosion hazard areas	Clarify definition of existing development.	In steep slope areas, development located in the footprint of existing development is currently allowed. However, the current code is not clear about what constitutes existing development. The proposed amendments would stipulate that development must be within the footprint of existing legal structures or paved areas, not including landscaped areas or grading, and that all impacts from new development to the stability of the slope must be minimized.

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	Clarifying criteria for preemptive stabilization.	Stabilization measures to mitigate a landslide hazard are currently allowed, but the regulations are unclear about how this activity must occur. The proposed amendments would clarify that the stabilization must use the least intrusive method and are the minimum necessary to mitigate the landslide hazard to reasonably protect people and property.
	Clarify what does not constitute existing development.	The proposed amendments stipulate that, along with clearing or management of vegetation, stabilization measures do not constitute existing development so that stabilization cannot become a justification for subsequent additional development in steep slope areas.
	Incorporate provisions for small project waivers from current section 25.09.055.	See above description for Section 25.09.055.
	Remove criteria for the steep slope area variance and move to a new section 25.09.290.	The existing provisions for a steep slope area variance under 25.09.180.E refer to criteria for yard variances in 25.09.280 that an applicant must meet. The proposed amendments consolidate all criteria for a steep slope variance in one section and removes confusing cross-references to yard variances in section 25.09.280.
25.09.110 Development standards for peat settlement-prone areas	Clarify that removal of peat below the annual high static groundwater level is prohibited in a Category I peat settlement-prone area.	City staff identified this as a gap in current regulations. This gap is addressed to provide a level of protection for Category I peat settlement areas consistent with the original intent of Ordinance 122738, which Council adopted in 2008 to add provisions for peat settlement areas.
25.09.160 Development standards for wetlands	Change the buffer for Category III wetlands with moderate or greater habitat function from 85 feet to 110 feet.	Proposed changes are supported by BAS that reinforce the habitat and water quality values of these types of wetlands. The larger buffers are needed to provide appropriate protection not afforded by current buffer standards. In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.
	Include best management practices for development that will occur adjacent to wetland buffers.	Proposed changes are supported by BAS and include standards for development proposed adjacent to wetland and wetland buffers. In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.
	Update references to wetland delineation, wetland function determination requirements, and mitigation guidance.	Proposed changes are supported by BAS. The documents referenced are BAS guide wetland protection. In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.
	Require that either the vegetation in wetland buffers be restored or an increase in the buffer width for a wetland with a degraded buffer.	The current requirements for the size of buffers are based on the assumption that the area of the buffer is fully functioning with native vegetation and that no development is present. The current regulations do not provide direction when this is not the case. The proposal includes two

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		<p>options to provide functional buffers: restore the area in the buffer or increase the size of the buffer.</p> <p>In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
	Allow for replacement of existing development in an existing buffer when the buffer is separated from the wetland by an improved road and when the project includes restoration.	This provision was requested by City staff and is allowed by the Department of Ecology. The current regulations are too restrictive given the compromised conditions for wetland function due to the presence of the road. The proposal would allow for rational upkeep of property in these circumstances when done in conjunction with restoration as mitigation.
25.09.200 Development standards for fish and wildlife habitat conservation areas	Provide a provision that allows the Director to protect Washington Department of Fish and Wildlife's Priority Habitat through a Director's Rule.	<p>The current regulations allow the Director to protect WDFW Priority Species through a Director's Rule. This amendment allows for the protection of WDFW Priority Habitat through a Director's Rule as well.</p> <p>In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
	Require that restoration occur in a degraded riparian corridor when replacement of a structure is allowed.	<p>The current requirements for the size of the limited riparian development area is based on the assumption that the remaining area of the riparian corridor is fully functioning with native vegetation and that no development is present. The current regulations do not provide direction when this is not the case. The proposal is to require restoration of the degraded portion of the riparian management area to provide functional riparian corridors.</p> <p>In addition, specific standards are proposed to protect these areas as a replacement for the current use of SEPA to add consistency and predictability.</p>
	Include designated species of local importance.	Currently, the procedure and criteria for nominating and designating a species of local importance is outlined in 25.09.200.C, but it is not clear what species are on that list. The proposed amendments would indicate that Great Blue Heron are currently on that list.
25.09.220 Development standards for abandoned landfills	Add provision that all utility lines leaving an abandoned landfill must be sealed to prevent gas created from the landfill to leave the site.	This requirement would increase safety when development occurs in areas with abandoned landfills.
25.09.240 Short subdivisions and subdivisions	Include utilities as part of development that must be accommodated on each lot outside of the ECA when parcels are divided.	Currently, applications for subdivisions and short subdivisions must show that each lot contains area outside ECAs and buffers for all structures and access. In order to protect the ECA, the proposed amendments would also require that applications show adequate area outside the ECA for utilities.

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	Apply certain development standards (lot coverage, height limits) based on area outside the ECA and buffers in which development is prohibited.	Currently, the Code allows ECA areas to be used in calculating lot coverage, and height limits are also based on total lot area including the ECA. The change would require lot coverage to be calculated based on non-ECA area except for areas in which development is allowed and up to 30 percent of steep slope area.
	Apply single-family development standards for new lots in single family zones based on non-ECA area.	<p>An application for a subdivision or short subdivision in an ECA already must either exclude the area of the ECA in the calculation of the number of lots the parcel may contain or show that each lot contains area outside ECAs and buffers for all structures and access. However, current regulations allow an applicant to include the ECA area in meeting certain development standards, as mentioned above. This has resulted in development where the structure appears out of scale with existing development in the same vicinity and zone. This is the case, for example, with steep slope ECAs because these areas are not visible on the same grade plane of the lot where the development is sited and results in development where it appears that a house is sited on a much smaller lot and crowded when multiple lots are created adjacent to one another.</p> <p>The proposed amendments would stipulate that the development standards are applied based on the area outside the ECA. New houses would be required to meet the single-family lot coverage, maximum height, and yard standards based on the non-ECA area, since that is in effect the buildable area for the development. This requirement could constrain the size of some houses on some lots, but is not intended to limit the number of houses that would result from the division of a larger lot into smaller lots.</p>
25.09.260 Environmentally critical areas administrative conditional use	Add new requirements for minimum standards for yards and building separations. Lot coverage calculations would be limited to areas outside the ECA and any ECA areas authorized for development by the ACU process.	<p>As currently written, the ECA administrative conditional use (ACU) process has sometimes resulted in development that is out of scale with what could otherwise be constructed on a non-ECA parcel. The current regulation for ACUs is to allow an applicant to count ECA land in calculating the total number of lots allowed on the parcel under the basic Land Use Code minimum lot standards, in situations where the strict application of 25.09.240 would otherwise limit the number of lots, while concentrating development as much as possible on the areas of property outside the ECA land and buffers. The proposed amendments would continue to allow an applicant to propose smaller lots and smaller than required building separations than the minimum required by the single-family zone.</p> <p>However, under the proposed amendments, if smaller than required lots are proposed, the resulting development would have to comply with specific minimum standards for yards and building separations, helping to make them fit in better with the neighboring development. Lot coverage</p>

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		calculations would be limited to areas outside the ECA and any ECA areas for which relief from steep slope erosion standards is granted and an area up to 30 percent of the steep slope ECA that is authorized for development by the ACU process.
	Add prioritization for how to modify development in a steep slope area or buffer in order to minimize impact on the ECA.	If an administrative conditional use application includes development in a steep slope area or buffer, that development must be the minimum necessary to achieve the number of units that would otherwise be allowed on the subject property if it did not contain an ECA. The proposed amendments specify the order in which a proposal should be modified to achieve this: first by reducing lot size, then by reducing the steep slope buffer, and finally by developing in a maximum of 30 percent of the steep slope area.

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	<p>Modify development standards for single-family dwelling units and update the subjective criteria related to “neighborhood compatibility” by adding specific development standards.</p>	<p>Similar to the proposed amendments for short subdivisions and subdivisions under 25.09.240, this legislation responds to development on parcels with ECAs that has resulted in structures that are out of scale with existing development in the vicinity and in the same zone as the proposed development. While the intent of the ACU provisions is to allow an applicant to reasonably develop a parcel while protecting the ECA, the current regulations allow development that sometimes deviates from what would be allowed on a non-ECA parcel.</p> <p>In addition, in administering the ACU regulations, SDCI has found it difficult to consistently assess the requirement for neighborhood compatibility under 25.09.260.B.3. For these reasons, the proposed amendments add specific development standards for development proposed in an ACU application.</p> <p>Similar to the proposed amendments to 25.09.240, development would be subject to lot coverage standards for single-family dwelling units and include building separation standards. The current regulations allow for clustering of houses by reducing yards (with no specific limits), and for attached houses, but this can result in development that is larger and bulkier than otherwise allowed by the Land Use Code. Under the proposal, the ACU would continue to allow greater flexibility than under 25.09.240, but lot coverage would apply to the sum of the non-ECA land and any area of intrusion into the ECA, subject to limits specific in the proposed legislation, that is authorized in order to achieve the maximum number of lots allowed on the parcel. Further, building separations could be reduced as before, but only to specified minimum limits specified in the proposed legislation.</p> <p>For example, an application for development on a parcel large enough to subdivide into four lots can still propose four lots that are smaller than required by the underlying single-family zoning in order to stay out of or minimize intrusion into the ECA. Because they have to conform to lot coverage and building separation standards, the structures on those lots may be smaller as a result. The number of lots and structures allowed on the parcel is not intended to change.</p>
	<p>Require that new lots created under 25.09.260 must be approved through the unit lot subdivision regulations.</p>	<p>While clustering of more than one house per lot would continue to be allowed, any subdivision of property would be required to be approved as a unit lot subdivision. By requiring a unit lot subdivision, ECA covenants and other site constraints that protect the ECA, such as drainage requirements, would apply to the entire property (the parent lot), not just individual lots.</p>

Table 3. Description of Code Changes

Code Section	Proposed Change(s)	Rationale
25.09.280 Yard and setback reduction and variance to preserve ECA buffers and riparian corridor management areas	Clarify that the analysis of whether granting the variance would be injurious to safety, the property, or surrounding area is made considering the impacts remaining when all codes have been implemented.	Currently, analyzing the safety of an ECA variance occurs before other codes have been considered and applied. Application of other codes may affect the outcome of the analysis. This amendment would require that this analysis consider all other applicable regulations, such as the Building Code and Stormwater Code.
25.09.290 Steep Slope Erosion Hazard Area Variance	Create new section consolidating the criteria for granting a steep slope erosion hazard area variance.	Most of the criteria for a steep slope area variance are currently contained in subsection 25.09.180.E.1. However, this subsection refers to other variance criteria contained in subsection 25.09.280.B, requiring reviewers to move back and forth through the Code. The proposed amendments remove this inefficiency by consolidating the criteria in a single section.
25.09.300 Environmentally critical area exception	Refer to new section 25.09.065 for mitigation sequencing.	The ECA exception criteria currently require that public projects pursuing an exception minimize and mitigate all adverse impacts. This subsection would be replaced with a reference to a new section 25.09.065 that would outline mitigation requirements more specifically.
25.09.520 Definitions	Add definition for “fish habitat.”	In a few instances, Chapter 25.09 refers to fish habitat, which currently is not defined except broadly as part of the definition of “wildlife habitat.” The proposed amendments would define fish habitat as wildlife habitat that specifically “supports fish at any life stage at any time of the year, including off-channel habitat and potential habitat that is likely to be used by fish and could be restored.”
	Modify definition of “land disturbing activity.”	The proposed amendments would add “draining water from a site” to the list of actions that are considered land disturbing activity.
	Modify definition of “Parcel.”	The proposed amendment includes “state rights-of-way” to the definition of parcel and clarifies that these areas will be subject to Chapter 25.09. Additionally, this amendment responds to questions about whether the regulations apply in any public rights-of-way containing an ECA or buffer.

Table 3. Description of Code Changes		
Code Section	Proposed Change(s)	Rationale
	Added the following definitions: “Aquatic environment” “Aquatic life” “Best available science” “Biodiversity areas and corridors” “City project” "Conservation easement" "Department" "Feasible" "Infeasible” Interior renovation and interior alteration” “Maintenance and repair” "Maximum extent feasible" “Qualified environmental professional “Plan view” “Public agency” "Public projects” “Qualified environmental professional” "Reasonable/reasonably" "Reasonable use of property" “Renovation and structural alteration” “Single-family residence” “Tree and vegetation management” “Wetland rehabilitation”	Increase clarity by adding the definitions listed to the left.

Development Standards for Wetlands

The increase in the wetland buffer size for Type III wetlands with a moderate or greater level habitat function adds an additional 25 feet of land (from 85 feet to 110 feet) that would be regulated under this ordinance for this wetland type. Based on the past seven years of regulating wetlands, the majority of wetlands do not fall into this category. Additionally, DPD analyzed the City’s mapped wetlands and the majority of these wetlands are located on parks property or within other environmentally critical areas. Therefore, DPD expects little impact from this change on the number of parcels that could otherwise be developed.

Great Blue Heron Director’s Rule

DPD is proposing to amend Director’s Rule (DR) 5-2007: Great Blue Heron Management Plan. Great blue heron is a designated species of local importance in Seattle. (See Section 25.09.200.D for details on nominations and designations of species of local importance.) Great blue heron can be vulnerable due to their tendency to congregate during the breeding season. Their nests are typically constructed in the tallest trees available. As a listed WDFW Priority Species, great blue heron are protected along with their nests under RCW 77.15.130, which concerns the protection of fish and wildlife.

DR 5-2007 provides details about the ECA code requirement that an applicant have a Great Blue Heron Management Plan approved by DPD prior to any development. The proposed amendments to DR 5-2007 would make the following primary changes:

Table 4. Great Blue Heron Director’s Rule	
Proposed Change(s)	Rationale
Include an area for a year-round buffer and maintain existing area for the seasonal buffer.	The updated WDFW guidance for protection of great blue heron recommends a 60-meter (197-foot) year-round buffer and an additional seasonal buffer of 200 meters (656 feet) for loud noises and 400 meters (1,320 feet) for extremely loud noises such as blasting. The proposed would update the regulations to include the year-round buffer and maintain the current 152-meter (500-foot) seasonal buffer given the highly urban nature of Seattle.
Extend the timing of the seasonal buffer by one month to August 31 st .	Based on best available science and great blue heron are documented to use their nests until August 31 st .
Include a new term - “Great Blue Heron Management Core Zone”; change the term “colony nesting area” to “great blue heron nesting colony”; and update the definition of Great Blue Heron Management Area.	Currently the Great Blue Heron Management Area includes the “Colony Nesting Area” and a surrounding 500-foot seasonal buffer. The proposed changes include: <ul style="list-style-type: none"> • A new defined term, “<i>Great Blue Heron Management Core Zone</i>,” which consists of the Great Blue Heron Nesting Colony and the year-round buffer. • Change the term “Colony Nesting Area” to “Great Blue Heron Nesting Colony.” • Update the definition of the Great Blue Heron Management Area to include the Great Blue Heron Management Core Zone and the seasonal buffer.
Strengthen tree preservation requirements.	The proposed amendments would require that all six-inch diameter trees at breast height (dbh) be retained when removal of these trees would decrease the extent to which a colony is screened from new development. Currently only 22-inch dbh screening trees must be retained during nesting season.
Map the great blue heron staging area	WDFW’s updated guidelines include the description of a great blue heron staging area. This area will be mapped so that it can be monitored to determine if additional regulations are required to protect the great blue heron. The staging area can be used by the male great blue heron from January 1 – March 30 of each year.
Specify that if a nesting colony has been abandoned by a great blue heron colony then the great blue heron management core zone for this colony shall be protected for a period of 10 years from the last known active nesting season.	Based on best available science and a requirement of WDFW.

The most significant change to DR 5-2007 is the addition of a 197-foot year-round buffer within which potential impacts of development on the great blue heron nesting colony will be required to be evaluated using mitigation sequencing. DPD analyzed the specific parcels that this regulation could affect. Currently, there are seven locations identified as great blue heron nesting areas. Much of the land within the proposed 197-foot buffer surrounding these areas meets one of the following conditions:

- It is a park or another ECA, such as a wetland or riparian corridor, and therefore already is not likely or able to be developed.

- It is zoned for single-family residential development and already developed. The 197-foot buffer will not limit the number of houses that can be developed. However, vegetation management for protection of the great blue heron nesting colonies would be required.
- Two areas of note are the Kiwanis, currently abandoned, and North Beach Ravines. In these areas, the entire ravine is considered the nesting colony and is surrounded by a 500-foot seasonal buffer. The 197-foot year-round buffer would apply around the specific nesting trees in the ravines. The majority of the area surrounding the ravines is zoned for single-family residential development, and the regulations would not limit the number of houses that can be developed.

Two other nesting areas are located where the year-round buffer would include land that has development potential:

- On the University of Washington campus at Rainier Vista. This year-round buffer for this nesting area includes land zoned for Major Institutions.
- At the edge of the West Duwamish Greenbelt. A portion of the year-round buffer for this nesting area includes land zoned for industrial use. This land is currently developed and the property can be redeveloped using mitigation sequencing.

State Environmental Policy Act

The proposed changes to SEPA are to delete Sections 25.09.747 and 25.09.908 and to amend Sections 25.09.305, 25.09.800, and 25.09.900, and the Director’s Rule titled Exemptions State Environmental Policy Act (SEPA) Exemptions from Environmental Review Requirements When Establishing, Changing or Expanding a Use to reflect the deletion of Section 25.09.908. The Washington State Administrative Code (WAC) creates certain categorical exemptions that local jurisdictions cannot expand. However [WAC 197-11-908](#) and [WAC 197-11-305\(1\)\(a\)](#) allow the City to remove certain exemptions if the action will be in a critical area and to require a limited SEPA review. These provisions allow local jurisdictions the ability to choose the type and size of actions that will not be exempt from SEPA review and to choose the critical area(s) in which the action will not be exempt. The limited review that is required for the category of projects that is not SEPA exempt under the above provision is in subsection 25.09.908.B as follows:

B. The scope of environmental review of proposals within these environmental critical areas is limited to:

- 1. Documenting whether the proposal is consistent with The City of Seattle Regulations for Environmentally Critical Areas, SMC Chapter 25.09; and*
- 2. Evaluating potentially significant impacts on the environmentally critical area resources not adequately addressed in The City of Seattle Environmentally Critical Areas Policies or the requirements of SMC Chapter 25.09, Regulations for Environmentally Critical Areas, including any additional mitigation measures needed to protect the environmentally critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.*

The proposal would amend the ECA regulations to address 25.09.908.B.2 above so that the ECA regulations provide the protection required, including additional mitigation measures needed to protect environmentally critical areas in order to achieve consistency with SEPA and applicable environmental laws. These amendments are identified in Table 3 of this report.

Additional changes to the SEPA Director's Rule on use includes allowing vegetation management that complies with Section 25.09.070 of the ECA regulations as part of activities exempt under 25.09.800.B.5.

Best Available Science and Background Documents

The best available science and background documents for this ECA update include the following documents and they are available on SDCI's [ECA update website](#):

- Best Available Science Review for Fish and Wildlife Habitat Conservation Areas (2013);
- Best Available Science Review for Wetlands (2014);
- Best Available Science Review for Geologic Hazard Areas (2014);
- Best Available Science documents for the 2006 - 2012 ECA amendments;
- Best Available Science for the City of Sammamish Critical Areas regulations (2012);
- Department of Community, Trade and Economic Development's Critical Areas Assistance Handbook: Protecting Critical Areas within the Framework of the Washington Growth Management Act (2007);
- Department of Ecology's Wetland Rating, Delineation, Buffer, Mitigation, Protecting and Managing, and Guidance for CAO Updates, Western Washington Version documents (2005 – 2016).

Recommendation

The GMA requires jurisdictions to meet several different goals (RCW 36.70A.070.) For example:

Policies to encourage urban growth must be reconciled with regulations for protection of habitat, air and water quality, and the environment.

The proposed amendments meet the goals to protect environmentally critical areas while still meeting the goal to encourage urban growth. The process of updating the ECA regulations engaged the public and stakeholders throughout the drafting of this Ordinance, and input from public meetings and other sources informed SDCI's recommended code changes.

The proposed amendments reflect updates to the BAS for protecting wetland functions, conserving great blue heron habitat, and managing impervious surfaces. Changes to how SDCI regulates development in steep slope areas would add specific standards to improve compatibility with neighborhood character while maintaining the ability for a property owner to recover development credit.

The City has longstanding provisions providing property owners options for relief from development regulations where appropriate in order to ensure reasonable use of their property. In the relatively few instances where the proposed amendments would change how a parcel is currently regulated under Chapter 25.09, a property owner would continue to have an opportunity to apply for relief through a variance or exception process.

In addition, while the GMA requires the City to protect the current functions and values of critical areas, the proposal allows property owners to improve habitat function, if they wish to and if they demonstrate that their proposals will achieve this. This is not a GMA requirement but has the benefit of improving then urban environment.

The Director recommends adoption of the proposed amendments in order to comply with the GMA requirement to maintain up to date, standards that include BAS for protecting critical areas. The proposed amendments reflect the City's goals of environmental protection, efficient land use, and production of housing. The proposal would help to protect and enhance the critical ecological functions and values that contribute to Seattle's quality of life.