
Council Bill Number: 115414

Ordinance Number: 122050

AN ORDINANCE amending Seattle Municipal Code chapter 25.09, relating to environmentally critical areas, and amending related provisions of Seattle Municipal Code Title 23, Sections 23.28.030, 23.22.058, 23.44.008, 23.44.010, 23.44.014, 23.44.024, 23.45.014, 23.45.056, 23.45.072, 23.53.010, 23.53.015, 23.53.020, 23.53.025, 23.53.030, 23.84.010, 23.90.002.

Status: Passed as Amended

Note: ECA, Environmentally Critical Areas Ordinance

Vote: 9-0

Date filed with the City Clerk: 2006/04/05

Date of Mayor's signature: 2006/03/29 ([about the signature date](#))

Date introduced/referred to committee: 2005/10/10

Committee: Energy & Environmental Policy

Sponsor: GODDEN

Committee Recommendation: Pass

Index Terms: LANDSLIDES, LAND-USE-PERMITS, LAND-USE-CODE, ENVIRONMENTAL-PROTECTION

Fiscal Note: [Fiscal Note to Council Bill No. 115414](#)

Electronic Copy: [PDF scan of Ordinance No. 122050](#)

Reference: Related:~~ [Clerk File 309864](#)

Text:

AN ORDINANCE amending Seattle Municipal Code chapter 25.09, relating to environmentally critical areas, and amending related provisions of Seattle Municipal Code Title 23, Sections 23.28.030, 23.22.058, 23.44.008, 23.44.010, 23.44.014, 23.44.024, 23.45.014, 23.45.056, 23.45.072, 23.53.010, 23.53.015, 23.53.020, 23.53.025, 23.53.030, 23.84.010, 23.90.002.

WHEREAS, the City of Seattle wishes to adopt regulations to promote safe, stable, and compatible development and to protect critical areas pursuant to the authority of Chapter 36.70A RCW (the "Growth Management Act"), including the statewide planning goals, and pursuant to the City's police power authority independent of the Growth Management Act to adopt planning and zoning regulations; and

WHEREAS, compliance with the Growth Management Act requires balancing of competing goals which cannot always be reconciled easily in a single regulatory ordinance; and

WHEREAS, Council recognizes that the successful implementation of the Environmentally Critical Areas ordinance increases the ongoing local and regional need to develop and implement policies that provide adequate housing capacity and identify suitable buildable lands; and

WHEREAS, the City of Seattle wishes to adopt regulations to implement the City's Comprehensive Plan; and

WHEREAS, the City of Seattle has engaged in public participation, has considered the best available science, the statewide planning goals, and the City's Comprehensive Plan, and has determined that it is appropriate to amend its

environmentally critical areas regulations and Title 23 based on the information and analysis set out in the Director's Report and Recommendations;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Title 25.09 of the Seattle Municipal Code is amended as follows:

~~25.09.010 Moratorium on development in landslide-prone areas~~

Purpose of the chapter.

~~Notwithstanding any other provision of this chapter or of Chapter 23.76, all public and private development that is subject to this chapter and proposed for landslide-prone areas, as described in Section 25.09.020 B1a, is prohibited during the term of this section, except that the Director may approve the following:~~

~~A. Work that will not disturb the ground, such as interior repairs to existing structures;~~

~~B. Work that is necessary to stabilize a site that has been rendered unstable by recent slide activity, so as to lessen the risk of new or additional damage;~~

~~C. Work that is necessary to repair damaged structures or utilities, as long as the Director is reasonably satisfied that the work will not increase the risk of either short-term or long-term damage to the site or neighboring property;~~

~~D. Work that would be exempted pursuant to Section 25.09.040, provided that work that would be exempted pursuant to subsections B, C, and F may be approved only if the Director is reasonably satisfied that the work will not increase the risk of either short-term or long-term damage to the site or neighboring property; and~~

~~E. Work that would be exempted pursuant to Section 25.09.180 D1 if the Director is reasonably satisfied that the work will not increase the risk of either short-term or long-term damage to the site or neighboring property.~~

This chapter is based on and implements The City of Seattle Comprehensive Plan, as amended from time to time. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public, and to not create or otherwise establish or designate any particular person, or class, or group of persons who will or should be especially protected or assisted by the terms or provisions of this chapter. This chapter is intended to promote safe, stable, and compatible development that avoids adverse environmental impacts and potential harm on the parcel and to adjacent property, the surrounding neighborhood, and the drainage basin.

25.09.015 Application of chapter.

A. This chapter applies to any development, as defined in Section 25.09.520, or platting carried out by any person on publicly or privately owned parcels containing an environmentally critical area or buffer.

B. This chapter applies to altering vegetation, trees, or habitat carried out by any person in landslide-prone critical areas (including steep slopes), steep slope buffers, riparian corridors, shoreline habitat, shoreline habitat buffers, wetlands, and wetland buffers on publicly or privately owned parcels.

C. Section 25.09.200 A4 applies to daylighting pipes and culverts defined in that subsection.

25.09.017 Administration.

A. The Director shall administer and interpret the provisions of this chapter, except as specifically provided.

BA. The Director shall determine whether development, platting, or alteration of vegetation, trees, or habitat is subject to this chapter. The Director may also consult with other City departments and state and federal agencies as necessary to obtain additional technical and environmental review assistance.

CB. The Director shall review and analyze all applications for all permits or approvals subject to this chapter that are issued by the Department of Planning and Development. Such applications shall be approved only after the Director is satisfied the applications comply with this chapter.

DC. Every other City department issuing a permit for development on parcels containing an environmentally critical area or its buffer or for altering vegetation, trees, or habitat in the areas set out in subsection 25.09.015 B shall require the use of best management practices to prevent impacts to environmentally critical areas and their buffers and to meet the intent of this chapter. Departments shall require mitigation to address unavoidable impacts. All such City departments shall maintain records documenting compliance with this subsection DC.

E. The Director shall identify techniques that are best management practices for actions administered by the Director. The Director may do this by Director's Rule. The directors of other City departments applying these regulations or issuing permits for development in environmentally critical areas or their buffers may identify techniques that are best management practices and may do this by Director's Rule.

F. The provisions of Section 23.88.020 apply to a decision by the Director as to the meaning, application, or intent of any provision of this chapter. Other administrative appeal provisions set out in Title 23 do not apply to decisions under this chapter, except as specifically provided.

25.09.020 Environmentally critical areas definitions.

~~A. This chapter is based on and implements the Seattle Environmentally Critical Areas Policies as adopted by Resolution 28559, and as amended from time to time. This chapter shall apply to all development and platting located in environmentally critical areas as defined below and characterized by specific site conditions. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public, and to not create or otherwise establish or designate any particular person or class or group of persons who will or should be especially protected or benefited by the terms or provisions of this chapter.~~

~~B. The following shall constitute~~ are environmentally critical areas regulated by this chapter:

geologic hazard areas, steep slope areas, flood-prone areas, wetlands, fish and wildlife habitat conservation areas, and abandoned landfills.

~~†A. Geologic Hazard Areas and Steep Slope Areas.~~

1. Geologic hazard areas are liquefaction-prone areas and landslide-prone areas described in subsections 2 and 3. Landslide-prone areas include steep slope areas. Steep slope areas that are regulated for additional erosion hazards are described in subsection 4. Seismic hazards are addressed in subsection 5.

2. Liquefaction-prone Areas. Liquefaction-prone areas are areas typically underlain by cohesionless soils of low density, usually in association with a shallow groundwater table, that lose substantial strength during earthquakes.

~~3. Landslide-prone Areas. The following are~~ Landslide-prone areas are characterized by the following:

~~(1)a. Known landslide areas identified by documented history, or any areas that have shown significant movement during the last ten thousand (10,000) years or are underlain by mass wastage debris that occurred~~ deposited during this period; or

~~(2)b. Potential landslide areas; Potential landslide areas based on documented geological characteristics, and based on a combination of geologic, topographic and hydrologic factors, including the following:~~

~~(a) Areas over fifteen (15) percent slope which have at least one (1) of the following characteristics:~~

~~(i) Impermeable soils (typically silt and clay) interbedded with permeable granular soils (predominantly sand and gravel); or impermeable soils overlain with permeable soils. This includes the area within one hundred (100) feet either side of the contact between Esperance Sand and either Lawton Clay or Pre-Lawton sediments as is shown on the area noted as Class Four (4) on the Slope Stability Map of Seattle, in Causes, Mechanisms and Prediction of Landsliding in Seattle, by Donald Willis Tubbs, Ph.D. Dissertation, University of Washington, 1975 ("Tubbs Map"), or as otherwise mapped; or~~

~~(ii) Identified relatively unstable soils in either Lawton Clay or Pre-Lawton sediments, as is shown on the area noted as Class Three (3) of the Tubbs Map, or as otherwise mapped; or~~

~~(iii) Springs or groundwater seepage;~~

(1) Those areas that are described as potential slide areas in "Seattle Landslide Study" (Shannon & Wilson, 2000, 2003), or as more accurately mapped.

(2) Areas with indications of past landslide activity, such as landslide headscarps and sidescarps, hummocky terrain, areas

with geologic conditions that can promote earth movement, and areas with signs of potential landsliding, such as springs, groundwater seepage, and bowed or backtilted trees.

(3) Areas with topographic expression of runout zones, such as fans and colluvial deposition at the toes of hillsides.

(4) Setbacks at the top of very steep slopes or bluffs, depending on soil conditions.

~~(b)(5) Steep slopes with an incline of forty (40) percent average slope or greater as defined by the Director. A slope must have a vertical elevation change of at least ten (10) feet to be considered a steep slope, although the ten (10) feet may cross the boundaries of a site. Slopes that meet these characteristics shall be considered steep-slope environmentally critical areas in addition to being classified as potential landslide areas; or more within a vertical elevation~~

change of at least ten feet (10').

For the purpose of this definition, a slope is measured by establishing its toe and top and averaging the inclination over at least ten feet (10') of elevation difference.

Also for the purpose of this definition:

(a) The "toe" of a slope means a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "toe" of a slope is the lower-most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25'); and

(b) The "top" of a slope is a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "top" of a slope is the upper-most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25').

~~(e)(6) Areas that would be covered under either (a) or (b) one of subsections (2) to (5), but where the topography has been previously modified through the provision of retaining walls or non-engineered cut and fill operations;~~

~~d(7)~~ Any slope area potentially unstable as a result of rapid stream incision or stream bank erosion.

~~b. Liquefaction-prone Areas. Liquefaction-prone areas are areas underlain by cohesionless soils of low density usually in association with a shallow groundwater table which lose substantial strength during earthquakes.~~

4. Steep Slope Areas. Steep slope areas are areas with a slope described in subsection A3b(5) above; provided that the area is only a landslide prone area when such a slope is on a parcel in a Downtown zone or highrise zone.

5. There is a known risk from a seismic events in Seattle and the surrounding region. Subsection 1-4 identify areas that constitute a particularly high risk to safety and welfare from such events and are therefore regulated as environmentally critical areas. The risks associated with seismic hazards in the remainder of the City are regulated by the Building Code (SMC Title 22) and not by this Ordinance.

2B. Flood-prone Areas. Flood-prone areas are those areas that would likely be covered with or carry water as a result of a one hundred (100) year flood event storm, or that would have a one percent (1%) or greater chance of being covered with or of carrying water in any given year based on current circumstances or maximum development permitted under existing zoning. This includes areas identified as flood-prone on the Seattle Floodplain Development Ordinance or on FEMA maps, and streams identified by the Washington State Department of Fisheries Catalog of Washington Streams, and areas with drainage stormwater runoff problems known to the Seattle ~~Drainage and Wastewater Utility~~. Public Utilities.

~~3. Riparian Corridors. Riparian corridors include all areas within one hundred (100) feet measured horizontally from the top of the bank, or if that cannot be determined, from the ordinary high water mark of the watercourse and water body, or a one-hundred (100)-year floodplain as mapped by FEMA, as regulated by the Seattle Floodplain Development Ordinance, whichever is greater, and are classified as either a Class A Riparian Corridor or a Class B Riparian Corridor. Class A Riparian Corridors are stable, established streams and lakes that flow year-round and/or support salmonids, and include, but are not limited to, corridors that have an established floodplain as mapped by the FEMA Flood Insurance Program, and include Longfellow, Thornton, Pipers, Venema, Mohlendorph, Fauntleroy, Ravenna, Mapes, DeadHorse/Mill, Maple Leaf and Little Brook Creeks, and Haller and Bitter Lakes. Class B Riparian Corridors are not mapped by FEMA and are intermittent streams without salmonids that still demonstrate a high water mark. Riparian corridors do not normally include those artificial drainage areas intentionally created from grass-lined swales, canals, detention facilities, wastewater treatment facilities, and landscape amenities.~~

4C. Wetlands. Wetlands are those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and stormwater ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands. The method for delineating wetlands shall follow the most current version of the "Washington State Wetlands Identification and Delineation Manual" as adopted by the State Department of Ecology (Publication #96-94.)

5D. Fish and Wildlife Habitat Conservation Areas. The following are Fish and wildlife habitat conservation areas include, but are not limited to, the following:

1. Areas mapped by the Washington State Department of Fish and Wildlife ("WDFW") as urban natural open space habitat areas.

a2. Areas designated identified by the Washington State Department of Wildlife WDFW as priority habitats and species areas, including native eel grass beds, kelp beds, and recreational shellfish areas. or urban natural open space habitat areas;

~~(1)3. Corridors connecting other priority habitats and species areas or habitat areas for species of local importance meeting one of the following criteria: especially areas that would otherwise be isolated;~~

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

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

~~c. the parcel provides fish passage between fish habitat in Type 1-5 waters upstream and downstream of the parcel, whether that passage is in riparian watercourses, pipes or culverts.~~

~~(2) Areas that remain an isolated remnant of natural habitat of ten (10) acres or more and surrounded by urban development, with local consideration given to areas smaller than ten (10) acres;~~

~~b. All bodies of water that provide migration corridors and habitat for fish, especially salmonids, including Lake Washington, Lake Union and the Lake Washington Ship Canal, Duwamish River, and that portion of Elliot Bay within the City's jurisdiction;~~

~~e Commercial and Recreational shellfish areas and kelp and eelgrass beds and~~

~~d4. Areas which that provide habitat for species of local importance.~~

5.a Riparian corridors, which are the riparian watercourse and the riparian management area. The riparian watercourse is the watercourse of Type 2-5 waters defined in WAC 222-16-031 that have fish or wildlife habitat. Water in surface water ditches and stormwater conveyances, pipes, culverts, flow control facilities and water quality facilities are not regulated as riparian watercourses. The riparian management area is the area within one hundred (100) feet (100') measured horizontally landward from the top of each bank of the watercourse, or from the ordinary high water mark of the watercourse as surveyed in the field, if the top of the bank cannot be determined. In watercourses with braided 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 waters 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 5. This subsection 5b 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.

6. Shoreline habitat, which is Type 1 waters, defined in WAC 222-16-031, that provide migration corridors for fish listed by WDFW as a priority species waterward of the ordinary high water mark. 6E. Abandoned Landfills.

Abandoned landfills include those abandoned solid waste landfills identified by the Seattle-King County Health Department in their 1986 Abandoned Landfill Toxicity/Hazard Assessment Project, additional sites identified by public or historical research, and areas within one thousand (1,000) feet (1,000') of methane-producing landfills.

~~C. Environmentally Critical Areas Maps. Environmentally critical areas defined and identified in subsections A and B shall be mapped whenever possible. These maps shall be advisory and used by the Director to provide guidance in determining applicability of the standards to a property. Sites that include environmentally critical areas which are not mapped shall be subject to the provisions of this chapter.~~

~~The Director may update or amend the environmentally critical areas maps by Director's Rule, according to Seattle Municipal Code Chapters 3.02 and 3.06, as new information and improved mapping resources become available. Mapping amendments may occur at a frequency not to exceed once every year.~~

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, 25.09.180, and 25.09.200B. Environmentally critical areas are mapped whenever possible. These maps are advisory. The Director may update or amend the maps by Director's Rule.

B. The Director shall determine whether a parcel contains an environmentally critical area or buffer before other provisions of this chapter are applied. In determining whether a parcel contains an environmentally critical area or buffer, the Director may consider the environmentally critical areas maps, site surveys, topographic maps, technical environmental analysis, and any other information the Director determines necessary.

25.09.040 Application of standards Permits and Approvals Required.

~~The standards of this chapter shall apply to all public and private proposals for new structures, additions to structures, short subdivisions and subdivisions, grading and drainage activity, and tree and vegetation removal per Section 25.09.320 located on either public or private property within environmentally critical areas and their buffers. Public projects proposed by any public agency shall comply with the standards of this chapter. Projects shall be exempted from the requirements of the chapter when the following situations and/or conditions apply:~~

A. Prior to undertaking development or platting on a parcel containing an environmentally critical area or buffer, the person responsible shall submit an application complying with the provisions of Section 25.09.330, unless the person complies with the provisions of Section 25.09.045, 25.09.055, or 25.09.320.

B. Prior to undertaking actions under Section 25.09.045, 25.09.055, or 25.09.200 A4, the person responsible shall comply with provisions of the applicable section.

C. Prior to altering vegetation, trees, or habitat protected by this chapter the person responsible shall comply with the provisions of Section 25.09.320, unless that person complies with Section 25.09.045 or 25.09.055.

25.09.045 Exemptions.

A. 1. When the Director determines that criteria in subsections D to J below are met, those activities are exempt from the provisions of this chapter, except Sections 25.09.017 and .030 B and as otherwise provided in this section.

2. An application for an exemption may be made only as a component of a specific proposed development.

3. a. The applicant for an exemption shall provide all information requested by the Director and demonstrate that the work qualifies for the exemption. The Director shall determine whether work is exempt and may impose conditions on the work to protect environmentally critical areas and buffers or other property.

b. City agencies taking the action under any subsection of this section and the public agency taking the action under subsection J do not need to make an application to the Director provided that if no application is made, they shall comply with all provisions of this Section 25.09.045, make all determinations required to be made by the Director, including required conditions, and shall maintain records documenting compliance with all provisions.

B. All exempt activities shall be undertaken using best management practices; and, except for the exemptions in subsections D, F and G, in a manner that keeps damage to or alteration of any environmentally critical areas or buffers to a minimum. Tthe applicant shall maintain records documenting compliance with this subsection B.

C. The enforcement provisions of this chapter apply to all activities exempted under this section. The Director's determination that a violation exists is not limited by determinations made by other City agencies or public agencies under subsection A3b, above.

D. Development that does not temporarily or permanently encroach within, alter, or increase the impact to the environmentally critical area or buffer on the parcel where the development occurs is exempt from the provisions of

this chapter; if existing 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.

~~(A)E. When the Director determines there is an emergency threatening the public health, safety and welfare; Work directly related to ending a condition that (1) is an immediate threat to the public health, safety and welfare, or creates an immediate risk of damage to public or private property and (2) requires remedial or preventive action in a timeframe too short to allow compliance with the application provisions of this chapter is exempt from those provisions, provided that the work is the minimum work necessary to end the condition and the work is consistent with the development standards of this chapter to the extent practicable. Once the Director determines that the condition no longer meets these criteria, all work is subject to the provisions of this chapter, including but not limited to its application requirements, its development standards, and any requirements for technical reports and reviews for work that was exempt at the time it was performed.~~

~~BF. Maintenance, repair, renovation, or structural alteration of an existing structure structures in existence on October 31, 1992, the effective date of the ordinance codified in this chapter, unless otherwise prohibited by law that does not increase the impact to, or encroach further within, or further alter an environmentally critical area or buffer is exempt from the provisions of this chapter. Expansion or extension in any manner which increases the extent of nonconformity with the environmentally critical area provisions of the chapter shall not be permitted. When these structures are damaged by an act of nature, they may be rebuilt or replaced within one (1) year of the act of nature provided that the new construction or related activity does not further intrude into an environmentally critical area or required buffer and is subject to the flood hazard areas reconstruction restrictions;~~

~~C. New accessory structures and additions to structures whose developmental coverage does not exceed a cumulative addition of seven hundred and fifty (750) square feet of impervious surface after October 31, 1992, the effective date of the ordinance codified in this chapter, provided the addition is not constructed over a watercourse, water body or wetland;~~

~~D. When the applicant demonstrates to the satisfaction of the Director, through site surveys, topographic maps, technical environmental analysis, and other means as determined necessary by the Director that either one of the following situations apply:~~

~~1. The site contains no environmentally critical areas as defined in Section 25.09.020, or~~

~~2. The proposed development and associated land disturbing activity, including developmental coverage, does not occur within the area of the site designated as environmentally critical and any required buffer as defined in Section 25.09.020;~~

~~E. Normal and routine operation, maintenance, remodeling, and repair of existing public facilities and utilities, including the maintenance, vegetation management and revegetation of public parkland and open spaces, when undertaken pursuant to best management practices to avoid impacts to environmentally critical areas;~~

~~F. The following electric, natural gas, cable communications, telephone, public facility and utility, and right-of-way improvement projects, with the Director's approval of the location and limits of the project, only when the project is not a prerequisite to development. The exemption shall only be approved when the project is undertaken pursuant to best management practices to avoid impacts to environmentally critical areas, and when it can be demonstrated that:~~

~~1. No practicable alternative exists;~~

~~2. The encroachment into a critical area is minimized to the greatest extent practicable; and~~

~~3. Mitigation measures are employed before, during and after construction;~~

G. Rebuilding or replacing structures that are destroyed by an act of nature is exempt from the provisions of this

chapter, 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.

H. 1. The activities identified in subsection 3 below are exempt from the provisions of this chapter when 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 on or off the parcel.

2. The Director's decision shall:

a. include the approved location and limits of the work; and

b. shall require specific mitigation measures for impacts to all environmentally critical areas and their buffers before, during, and after construction.

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

a. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand (55,000) volts or less only when required by a governmental agency,

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

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

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

e. Public or private projects designed to enhance ~~streams~~ riparian corridors, shoreline habitat and its buffer, and wetlands and their buffers, including ~~drainage~~ stormwater-related functions, that require either a Hydraulic Project Approval from either the Washington Departments of Fisheries or Wildlife ~~Fish and Wildlife~~ or a Section 404 permit under the federal Clean Water Act from the United States Army Corps of Engineers, Aquatic Habitat Matching Grant program, established by City Council Resolution 30719, and

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

I. Normal and routine operation, maintenance, remodeling, repair, and removal of existing public facilities and utilities is exempt from the provisions of this chapter when these activities do not result in substantial disturbance of

environmentally critical areas or buffers.

J. Normal and routine (a) pruning, (b) tree and vegetation maintenance and management, and (c) revegetation are exempt from the provisions of this chapter when they do not result in substantial disturbance of environmentally critical areas or buffers and when they are carried out in parks, public utility right of ways, and publicly owned open spaces by the public agencies, including City agencies, that are responsible for them.

25.09.050 City Projects.

"City project" means all work described in Section 25.09.015 that is undertaken by a City agency. A City project shall comply with all provisions of this chapter unless the project is exempt under Section 25.09.045.

25.09.055 Small Project Waiver.

A. The Director may approve new accessory structures or additions to existing structures in environmentally critical areas and buffers, provided that no construction occurs over or in a water course, water body, or wetland, when the applicant demonstrates the proposal meets the following criteria:

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

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

B. Director's 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 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 require additional measures to protect the remainder of the environmentally critical area and/or buffer.

25.09.060 Application submittal requirements, general requirements and development standards General Development

Standards.

All proposals listed in Section 25.09.040 shall meet the following application submittal requirements, general requirements and development standards:

~~A. Application Submittal Requirements. In addition to the application submittal requirements specified in other codes, development proposals subject to this chapter shall include the following additional information as applicable:~~

~~1. Surveyed Site Plan. A surveyed site plan, prepared and stamped by a State of Washington licensed surveyor, shall be required for sites which include landslide-prone, flood-prone, riparian corridor, wetland, and steep-slope environmentally critical areas. The surveyed site plan shall include the following existing physical elements:~~

~~a. Existing topography at two-foot (2') contour intervals on-site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;~~

~~b. Terrain and drainage-flow characteristics within the site, on adjacent sites within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;~~

~~c. General location of areas with significant amounts of vegetation, and specific location and description of all trees and shrubs over six inch (6") caliper measured three feet (3') above the base of the trunk, and noting their species;~~

~~d. Location and boundaries of all existing site improvements on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements. This shall include the amounts of development coverage, including all impervious surfaces (noting total square footage and percentage of site occupied);~~

~~e. Location of all grading activities in progress, and all natural and artificial drainage control facilities or systems in existence or on adjacent lands within twenty-five feet (25') of the site's property lines, and in the full width of abutting public and private rights-of-way and easements;~~

~~f. Location of all existing utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on-site, on adjacent lands within twenty-five feet (25') of the site's property lines and in the full width of abutting public rights-of-way; and~~

~~g. Such additional existing physical elements information for the site and surrounding area as required by the Director to complete review of a project subject to the standards of Chapter 25.09.~~

~~2. Additional Site Plan Information. The following site plan information shall also be required for sites which include landslide-prone, flood-prone, riparian corridor, wetland, and steep-slope environmentally critical areas. Information related to the location and boundaries of environmentally critical areas and required buffer delineations shall be prepared by qualified professionals with training and experience in their respective area of expertise as demonstrated to the satisfaction of the Director.~~

~~a. Location and boundaries of all critical areas on-site and on adjacent lands within twenty-five feet (25') of the site's property lines, noting both total square footage and percentage of site;~~

~~b. Proposed location and boundaries of all required undisturbed fenced areas and buffers on-site and on adjacent lands within twenty-five feet (25') of the site's property lines;~~

~~c. Location and boundaries of all proposed site improvements on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements. This shall include the amount of proposed land disturbing activities, including amounts of developmental coverage, impervious~~

~~surfaces and construction activity areas (noting total square footage and percentage of site occupied);~~

~~d. Location and identification of all riparian corridors and wetlands within one hundred feet (100') of the site's property lines;~~

~~e. Location of all proposed grading activities, and all proposed drainage control facilities or systems on site or on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;~~

~~f. Location of all proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on-site, on adjacent lands within twenty-five feet (25') of the site's property lines, in the full width of abutting public rights-of-way, and any proposed extension required to connect to existing utilities, and proposed methods and locations for the proposed development to hook-up to these services; and~~

~~g. Such additional site plan information related to the proposed development as required by the Director to complete review of a project subject to the standards of Chapter 25.09.~~

~~3. Technical Reports. Technical reports shall be prepared as required by the Director detailing soils, geological, hydrological, drainage, plant ecology and botany, vegetation, and other pertinent site information. The reports shall be used to condition development to prevent potential harm and to protect the critical nature of the site, adjacent properties, and the drainage basin.~~

~~B. General Requirements for the Lot, Adjacent Lots, Surrounding Area, and Drainage Basin:~~

~~1. The developer shall ensure safe, stable and compatible development which avoids adverse environmental impacts and potential harm on the lot, to adjacent lots, the surrounding neighborhood, and the drainage basin. Detailed analysis of impacts, including cumulative impacts of development, of the proposed development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, fisheries, natural water temperature, slope and soil conditions, and surface-water drainage may be required by the Director when lot and area conditions indicate the need for such analysis. Supplemental technical reports may be required by the Director to specify measures to preserve, protect, and maintain adjacent sites and the drainage basin and ensure safe, stable and compatible development.~~

~~2. All conditions of approval associated with an approved development application and permit shall be recorded as official permit conditions at the Department of Construction and Land Use. During construction, the Director may require conditions to be posted on the site in such a manner as to be visible from public rights-of-way.~~

~~3. If applicable, as determined by the Director, the following environmentally critical areas and/or their associated buffers located on a development site, together with any permanent conditions, shall be described in a permanent covenant with the property which shall be recorded in the King County Office of Records and Elections:~~

~~a. Riparian corridor buffers; and/or~~

~~b. Wetlands and steep-slope environmentally critical areas and their required buffers.~~

~~If applicable, the Director may require placement of small permanent visible markers to delineate riparian corridor buffers and/or wetlands and steep-slope environmentally critical~~

~~areas and their required buffers. The location of the markers shall be described in the permanent covenant.~~

~~C. General Development Standards. General development standards as applicable shall include, but are not limited to the following: The following general development standards apply to development on parcels containing environmentally critical areas or their buffers, except as specifically provided in this chapter:~~

~~A. Any required nondisturbance area shall be legibly shown and described on the site plan, and a covenant shall be~~

required as set out in Section 25.09.335.

B. The project shall avoid adverse impacts from development on environmentally critical areas and buffers, and the Director shall restrict developmental coverage and construction activity areas to the most environmentally suitable, naturally stable, and least sensitive portion of the site in order to protect the ecological functions and values of wetlands and fish and wildlife habitat areas, prevent erosion from development on steep slope areas, and protect the public health, safety and welfare in landslide-prone, liquefaction-prone, and flood-prone areas. Grading activities and impervious surfaces that may impact environmentally critical areas or buffers shall be kept to a minimum and limited to areas approved by the Director.

C. Driveways and utility corridors that may impact environmentally critical areas or buffers shall be kept to a minimum through the use of common access drives and corridors where feasible. Roads, walkways, and parking areas should be designed parallel to topographic contours with consideration given to maintaining consolidated areas of natural topography and vegetation. Access shall be located in a way that keeps impacts to environmentally critical areas and buffers to a minimum.

~~D. 4 All buffers and designated non-disturbance areas and other designated protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and to protect environmentally critical areas. No removal of vegetation or wildlife habitat shall be permitted within the protected wetlands and their buffers, riparian corridors and their buffers, and steep slopes and their buffers either during or after construction, except as otherwise permitted by the chapter.~~

~~2. All disturbed areas on the site, including developmental coverage and construction activity areas, shall be managed in a manner sufficient to control drainage and prevent erosion during construction, and revegetated to promote drainage control and prevent erosion after construction. The Director may require an erosion control plan and a vegetation removal and replacement plan when erosion potential is severe. The erosion control plan shall be prepared and followed using best management practices. The vegetation removal and replacement plan shall be prepared by a qualified professional with landscaping, plant ecology and botany education and experience. All revegetation shall consist of trees, shrubs, and ground cover that does not require permanent irrigation systems for long-term survival and is suitable for the location.~~

E. 3: All site clearing sites on the lot that may impact environmentally critical areas or buffers shall be carried out
cleared in stages just prior to construction, and cleared areas shall only be kept to the minimum as large as necessary for
construction. Revegetation shall occur after the particular phase of construction is completed. When required by the
Director, the vegetation removal and replacement a tree and revegetation removal and replacement plan shall establish a
staged vegetation removal and replacement program which minimizes that keeps the amount of exposed soil during and
after construction to a minimum. In 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.

F. Construction activity on the lot that may impact environmentally critical areas or buffers shall adhere to a prepared schedule and mitigation plan approved by the Director prior to the start of construction. This schedule and mitigation plan shall include, but not be limited to, a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, work sequencing, and shall include the design, implementation, maintenance, and monitoring of mitigation requirements to prevent erosion, siltation, and destruction of vegetation.

G. All grading in environmentally critical areas shall be completed or stabilized by October 31st of each year unless the applicant demonstrates to the satisfaction of the Director based on approved technical analysis that no environmental harm or safety problems would result from grading between October 31st and April 1st. This provision does not apply to grading in liquefaction-prone areas and abandoned landfills environmentally critical areas unless the parcel contains another environmentally critical area.

H. Best management practices shall be used for all construction activity on parcels with or adjacent to environmentally critical areas or buffers to prevent sediment and other pollutants from entering the riparian corridor watercourses or

other fish and wildlife habitat conservation areas on or off the property. Best management practices include, but are not limited to, installation of siltation barriers, diversion measures, slope drains, and structural, vegetative stabilization techniques and other methods prescribed in Title 22, Subtitle VIII, the Stormwater, Grading and Drainage Control Code.

I. The Director may require an erosion control plan and a tree and revegetation removal and replacement plan when erosion potential is severe. The erosion control plan shall be consistent with best management practices, and best management practices shall be followed in implementing it. The tree and revegetation removal and replacement plan shall be prepared by a qualified professional with landscaping, plant ecology and botany education and experience. All revegetation shall consist of plants native to the Pacific Northwest and vegetation appropriate for site conditions..

J. The site, including developmental coverage and construction activity areas, shall be managed in a manner sufficient to control stormwater and prevent erosion during construction, and shall be revegetated to promote stormwater control and prevent erosion after construction, consistent with Title 22, Subtitle VIII, the Stormwater, Grading and Drainage Control Code.

~~4. The Director shall restrict developmental coverage and construction activity areas to the most environmentally suitable and naturally stable portion of the site. Grading activities and impervious surfaces shall be minimized and limited to areas approved by the Director.~~

~~5. All drainage associated with the development shall be connected to City-approved drainage control systems with approved discharge points in compliance with the SMC Chapter 22.802-808, Stormwater, Drainage and Erosion Control. If an adequate drainage conveyance system is not available and safety and erosion concerns dictate, the Director may require design of drainage facilities to handle up to a one hundred (100) year storm, and/or require a release rate slower than the rate normally required.~~

~~6. All construction activity on environmentally critical area sites in watersheds containing designated critical watercourses and associated riparian corridors shall follow best management practices. These practices include installation of siltation barriers to minimize erosion and pollutants entering the watercourse, as well as other methods such as diversion measures, slope drains, and structural and vegetative stabilization techniques.~~

K.7. When calculating detention requirements, all disturbed areas on the site shall be calculated as developmental coverage, including revegetated areas, excluding enhanced or restored areas as approved by the Director.

L. 8. Pesticides and fertilizers shall not be applied within (50) feet of a riparian corridor watercourse, wetland or shoreline except as allowed by the Director for the following circumstances and when allowed pesticide applications will be done by a licensed applicator:

1. The state or local Health Department recommends or directs their use to address a threat to public health, or

2. A county, state, or federal agency with jurisdiction directs their use for control of a state listed noxious weed or plant pests covered by the Washington State Department of Agriculture plant pest program, and when non-chemical alternatives have been evaluated, or

3. When the Director determines the applicant has demonstrated that the use will have no adverse impact to fish and wildlife. Such a determination may be in the form of concurring that the applicant has developed best management practices or an integrated pest management plan consistent with standards developed

by the Director, or

4. When the Director has determined that use of a pesticide to control invasive plants would have less overall environmental impact than other control strategies, or

5. When the Director determines there is a serious threat to public safety, health, or the environment.

~~M.~~ The Director may require a development proposal's design to account for a one hundred (100) year seismic and one hundred (100) year flood event, unless a design for a greater event is required by other applicable codes.

~~9. All grading in environmentally critical areas shall be completed or stabilized by October 31st of each year unless demonstrated to the satisfaction of the Director based on approved technical analysis that no environmental harm or safety problems would result from grading between October 31st and April 1st.~~

~~10. Development occurring in riparian corridor, wetland and steep-slope sites shall preserve the integrity of wildlife habitat corridors, and minimize the intrusion of development into designated wildlife habitat areas.~~

~~11. Construction activity shall adhere to a prepared schedule and mitigation plan to be approved by the Director prior to the start of construction. This schedule and mitigation plan shall include, but not be limited to, a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, work sequencing, and shall include the design, implementation, maintenance, and monitoring of mitigation requirements to prevent erosion, siltation, and destruction of vegetation. This plan shall be reviewed with the owner's representative and approved by the Director at a pre-construction meeting prior to the start of construction.~~

~~N.12. The Director may require additional construction practices and methods and requirements, including, but not limited to best management practices as outlined in federal, state and Seattle manuals, and limitations on construction equipment permitted on the site, to protect environmentally critical areas and buffers on and off the property, on-site, on adjacent sites, and within the drainage basin of a proposed development.~~

O. No provision of this chapter shall be construed to require putting new or existing power lines underground.

~~25.09.080 Development standards for landslide-prone hazard~~ Landslide-prone critical areas.

~~A. Site. This section applies to all parcels in or containing a landslide-prone critical area.~~

B. Site.

~~1. Complete stabilization of all portions of a site which that are disturbed or affected by the proposed development, including all developmental coverage and construction activity areas, shall be required. Complete stabilization of all portions of a site refers to the process and actions necessary to stabilize ensure that proposed site improvements are stabilized, and that all on-site areas and adjacent properties, including adjacent public and private rights-of-way, which that are disturbed or impacted affected are stabilized.~~

~~2. The proposed development or use shall be limited and controlled to avoid adverse impacts and potential harm, and to ensure provide safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to solve provide site stability problems may be required by the Director. This may include imposing conditions concerning the type and method of construction that reflect the specific constraints of the site.~~

3. Removal of, clearing, or any action detrimental to trees or vegetation in landslide prone critical areas is prohibited, except as provided in this section and Section 25.09.320.

~~B. Staged Review Process. Projects proposed in landslide-prone areas shall be subject to a staged review process.~~

~~1. The staged review process may consist of one (1) or more of the following steps:~~

~~a. Site visit and reconnaissance;~~

~~b. Preliminary soils investigations including tests and borings; and~~

~~c. Detailed geotechnical studies and engineering plans.~~

~~2. During the staged review process, more extensive studies and investigations may be required for more hazardous sites, based on the degree of slope, hydrology and underlying soils and geology. The Director may require detailed site investigation including, but not limited to the following:~~

- ~~a. Review of available literature regarding the site and surrounding areas;~~
- ~~b. Detailed topographic analysis;~~
- ~~c. Subsurface data and exploration logs;~~
- ~~d. Ground surface profiles;~~
- ~~e. Analysis of relationship of vegetated cover and slope stability;~~
- ~~f. Site stability analysis;~~
- ~~g. Geotechnical considerations to reduce risk; and~~
- ~~h. Construction and post-construction monitoring.~~

~~3. The Director shall determine the amount of additional study necessary depending on the degree of landslide-prone hazard on a site based on the information disclosed during the staged review process. The Director may require third-party review.~~

~~4. As part of the staged review process, the Director shall provide mailed notice to adjacent property owners, and the applicant shall post one (1) land use sign visible to the public at each street frontage abutting the site except, when there is no street frontage or the site abuts an unimproved street, the Director shall require either more than one (1) sign and/or an alternative posting location so that notice is clearly visible to the public. The land use sign may be removed by the applicant within fourteen (14) days after final action on the application has been completed. The purpose of this notice is to allow for an exchange of information between the applicant, adjacent property owners and the Director. Adjacent property owners may review and comment on site investigations and technical studies, and provide information and documentation of any previous landslide problems on the site. Notice will include information on how to find out whether or not third-party review is required.~~

~~C. Third-Party Review. In addition to requiring the information provided pursuant to Section 25.09.330 and to Director's Rules, ~~The Director shall determine when may require third-party review when the professional opinions of the applicant's representative and the Department's reviewers cannot be reconciled.~~ shall be required. Third-party review requires the applicant's geotechnical and/or additional technical studies to be reviewed by an independent third party, paid for by the applicant but hired by the Director. Third-party review shall be conducted by a qualified engineering consultant. In determining the need for third-party review, the Director shall consider whether or not the project is to be constructed on deep soft-soil areas, areas identified as being affected by deep slide masses or block movements, sites with excessive groundwater, and sites subject to lateral ground failure due to earthquakes.~~

~~D. Bonds and Insurance. The Director may require adequate bonds and/or insurance to cover potential claims for property damage ~~which that may arise from or be related to excavation or fill within a landslide-prone area a. The Director shall require such bonds or insurance~~ when the depth of the proposed excavation ~~shall~~ exceeds four (4) feet (4') and the bottom of the~~

~~proposed excavation ~~shall be~~ is below a the one hundred percent (100%) slope line (forty-five (45) degrees from a horizontal line) from the property line. The Director may require such bonds and insurance in other circumstances where the Director determines that there is a potential for significant harm to an environmentally critical area or buffer~~

during the construction process.

E. Permit renewals.

In addition to complying with the permit renewal standards in Chapter 23.76, applications for permit renewal shall comply with the following standards.

1. The Director may renew a permit for development that is in conformance with applicable regulations in effect at the time the renewal is sought.
2. An applicant seeking to renew a permit for new development in a landslide-prone area must submit a letter of certification from the current project geotechnical engineer of record as described in subsection G2. If such a letter of certification is not submitted, the permit shall not be renewed.
3. The Director may renew a permit for development in a landslide-prone area if, after considering the information submitted in conformance with subsections G, he or she determines that there is no increased risk of damage to the proposed development, to neighboring properties, or to the drainage basin. In making such a determination the Director may impose new conditions or require the submittal of revised plans.
4. An applicant for renewal also must demonstrate that any required bond or insurance will be in effect during the renewal period, and that the amount of such bond or insurance still is appropriate. The Director may require a bond or insurance as a condition of renewal even if such bond or insurance was not required previously.

F. Issued permits in landslide-prone areas. If the Director has reasonable grounds to believe that an emergency exists because significant changes in conditions at a project site or in the surrounding area may have occurred since a permit was issued, increasing the risk of damage to the proposed development, to neighboring properties, or to the drainage basin, the Director may by letter or other reasonable means of notification suspend the permit until the applicant has submitted a letter of certification as described in subsection G2 and has satisfied the standards of that section.

G. Letter of Certification.

1. The Director may require a letter of certification based on such factors as the presence of known slides, indications of changed conditions at the site or the surrounding area, or other indications of unstable soils.
2. The letter of certification shall be from the current project geotechnical engineer of record stating that a geotechnical engineer has inspected the site and area surrounding the proposed development within the sixty (60) days preceding submittal of the letter; and that:
 - a. In the project geotechnical engineer's professional opinion no significant changes in conditions at the site or surrounding area have occurred that render invalid or out-of-date the analysis and recommendations contained in the technical reports and other application materials previously submitted to the Department as part of the application for the permit; or that
 - b. In the project geotechnical engineer's professional opinion changes in conditions at the site or surrounding area have occurred that require revision to project criteria, and that in the project geotechnical engineer's professional opinion all technical reports and any necessary revised drawings that account for the changed conditions have been prepared and submitted.

25.09.100 Development standards for liquefaction-prone areas.

A. The general development standards set out in SMC 25.09.060 do not apply to liquefaction prone areas.

B. Soils engineering studies ~~may~~ shall be required for of all proposed development in areas subject to liquefaction-prone

areas to determine the physical properties of the surficial soils, especially the thickness

of unconsolidated deposits, and their liquefaction potential, as set out in Title 22, Subtitle I.

~~BC.~~ If it is determined that the site is subject to liquefaction, mitigation measures may be imposed pursuant to ~~appropriate to the scale of the development shall be recommended and implemented through requirements of Title 22, Subtitle VIII I, Grading and Drainage Control Ordinance, SMC Title 22, Subtitle I, Building Code, and any~~ in addition ~~to~~ other applicable codes or regulations pertaining to development ~~within~~ in liquefaction-prone areas.

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 ~~SMC Chapter 25.06, Seattle Floodplain Development Ordinance, (FEMA)~~ A drainage-control plan shall be required for all proposed development.

B. Drainage-Control Plan. If the site is mapped or determined to be flood-prone, the Director may require a drainage-control plan ~~shall~~ 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 ~~The~~ drainage-control plan shall provide for control of water quality and quantity in compliance with ~~the Title 22, Subtitle VIII, Stormwater Grading and Drainage Control Ordinance Code, SMC 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 ~~unless otherwise specified by the Director of Seattle Public Utilities.~~

25.09.140 Development standards for riparian corridors.

~~A. Riparian Corridor Watercourse. No development shall be permitted within or over the watercourse as delineated by survey and accepted by the Director. If no other access is available to the property, the Director may approve access over the watercourse as long as it maintains the natural channel and floodway of the watercourse and minimizes the disturbance of the buffer to the greatest extent possible.~~

~~B. Minimum Riparian Corridor Buffer. In order to prevent harm on-site and downstream, and in order to minimize degradation of water quality, a buffer shall be established within the corridor within which development shall not be permitted. All buffers shall be measured horizontally from the top of the bank, or if that cannot be determined, from the ordinary high water mark as surveyed in the field. In cases with braided channels and alluvial fans, the top of the ordinary high water mark shall be determined so as to include the entire stream feature. The buffer shall not extend beyond an existing public road if the road has an adequate storm water catchment facility. The minimum buffer shall be as follows:~~

~~1. Class A Riparian Corridor Buffers; Fifty Feet (50'); and~~

~~2. Class B Riparian Corridor Buffers; Twenty-five feet (25').~~

~~C. Buffer Vegetation and Restoration.~~

~~1. Natural Buffer. If the vegetation within the buffer is generally in a natural state that prevents erosion, protects water quality, and provides a diverse habitat, the retention of the buffer's existing vegetation shall be required.~~

~~2. Buffer Restoration. If the vegetation within the buffer has been previously disturbed or degraded, the preparation of a plan to enhance the buffer through replanting or augmenting the existing vegetation with native or similar plants may~~

~~be required by the Director. Any revegetation plan shall be prepared by a qualified professional with landscaping, plant ecology, or botany education and experience. The plan shall be approved by the Director. Vegetation shall not be removed or otherwise disturbed until the applicant is ready to replant immediately.~~

~~3. Buffer Restoration Exemption. When the site is a single lot, located adjacent to properties where natural vegetation has already been removed for lawns or other residential activities, the Director may conclude that a buffer restoration plan is not to be required or that buffer restoration is limited to planting trees for creek shading when no significant increase in protection of the water body would result from full restoration of the buffer.~~

~~D. Buffer Reductions on Existing Lots. The Director may reduce a Class A buffer if development of adjacent lots is less than fifty feet (50') from the watercourse. However, the buffer shall not be less than the distance to the watercourse from the adjacent structure that is furthest from the watercourse, or less than twenty-five feet (25'), whichever is greater.~~

~~E. Riparian Corridor Restoration.~~

~~1. To encourage restoration of a riparian corridor presently located in an underground pipe or culvert, the following conditions shall apply:~~

~~a. Every effort shall be made to avoid building over a riparian corridor located in an underground pipe or culvert, except when located under a street right-of-way; and~~

~~b. Uncovering of the riparian corridor should be encouraged and allowed with the Director's approval of the following exceptions to riparian corridor standards:~~

~~i. The minimum buffer may not be required if there is no space available; and~~

~~ii. The open riparian corridor may be located elsewhere on-site or on adjacent sites.~~

~~2. To encourage restoration of a riparian corridor presently located in an open channel or drainage-way, the Director may waive the minimum buffer.~~

~~F. More intensive site review and application of stricter development standards may be applied in areas outside of the riparian corridor buffer where any of the following conditions are present:~~

~~1. High, steep slopes that could produce debris slides directly to surface waters; or~~

~~2. Sites with polluted groundwater seeps or springs; or~~

~~3. Other areas of potentially extreme adverse impacts.~~

~~G. Other Agency Regulations. Review of projects subject to the riparian corridor provisions of this chapter shall be coordinated with the Washington State Departments of Fisheries or Wildlife when hydraulic project approval is required, and the U.S. Army Corps of Engineers when they have jurisdiction under Section 404 of the Federal Clean Water Act. The applicant shall be encouraged to make early contact with these agencies to ensure compliance with local, state and federal riparian corridor regulations.~~

~~25.09.160 Development standards for wetlands.~~

~~A. Wetland. Wetland provisions of this chapter shall apply only to wetlands of one hundred (100) square feet or greater in area, unless a smaller wetland or a combination of adjacent, smaller wetlands are part of a larger drainage system. No grading, filling, draining and/or development shall be permitted within or over a wetland of exceptional value and its buffer as delineated by a survey accepted by the Director. Grading, filling, draining and/or development within wetlands and their buffers, other than wetlands of exceptional value, shall only be allowed under the following limited~~

~~situations and conditions:~~

~~1. Wetlands altered for use as lawns or playfields prior to the effective date of this ordinance shall not be regulated as wetlands unless the Director determines that the wetland could be restored when new development or redevelopment occurs on the site; and~~

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 chapter.

B. Impacts to Wetlands.

1. Development, including but not limited to grading, filling, or draining, is prohibited within or over: a Category I, II or III wetland, a Category IV wetland one thousand (1,000) square feet or more in total size, and a Category IV wetland less than one thousand (1,000) square feet in total size that is part of a larger wetland system

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;

c. A wetland of any category or size that is part of a larger wetland system or abuts any Type 1-5 water.

2. Development may occur within or over Category IV wetlands less than one thousand (1,000) square feet, other than those wetlands described in subsection B1c, in accordance with subsection C3.

3. When development is authorized on a parcel containing a wetland:

a. All on or offsite runoff shall be routed away from the wetland and wetland buffer; and

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

4. Removal of, clearing, or any action detrimental to habitat, trees or vegetation in wetlands is prohibited, except as provided Section 25.09.320.

~~2. Wetlands, excluding wetlands of exceptional value, may be considered for alteration if the proposal meets the criteria for an Environmentally Critical Areas Exception, Section 25.09.300 of this chapter, and complies with the following wetland compensation requirements:~~

~~a. Restoration of an existing degraded wetland, or~~

~~b. Creation of additional substitute wetlands, although the Director shall give preference to restoration, and~~

~~c. Restoration of an existing degraded wetland or~~

~~creation of substitute wetlands shall meet the following conditions:~~

~~i. The applicant shall fund the wetland restoration or creation under the direction and authority of the Director,~~

~~ii. To the greatest extent practical, restoration or creation may occur either on or off site, but within the same drainage basin;~~

~~iii. Restoration or creation shall be of a similar type and shall take place before alteration of the original wetland;~~

- ~~iv. Restoration or creation shall require the original wetland to be replaced at a ratio of two to one (2:1), and~~
- ~~v. The restored or substitute wetland shall provide comparable water quality benefits and be of at least equal habitat and hydrologic value.~~

~~BC. Wetland Buffers and Mitigation. In order to protect wetland areas and maintain water quality, a minimum wetland buffer of fifty feet (50') shall be established within which no development shall be permitted and all vegetation shall remain undisturbed. The wetland buffer shall be measured horizontally from the edge of the wetland.~~

1. Establishment of buffers.

- a. The wetland buffer is measured horizontally from the edge of the wetland.
- b. Wetlands have the following buffers:

Category I and II wetlands over one hundred (100) square feet in total size or of any size with the characteristics described in subsection B1c above 100 feet

Category I and II wetlands over one 100 feet hundred (100) square feet in total 110 feet for moderate size level habitat or of any size with the function characteristics described in 200 feet for high subsection B1c above level of habitat function

Category III wetlands over one 60 feet hundred (100) square feet in total 85 feet for moderate size or greater level or of any size with the habitat function characteristics described in subsection B1c above

Category IV wetlands one thousand 50 feet (1,000) square feet or more in total size or of any size with the characteristics described in subsection B1c above

Category IV wetlands under one No buffer. Use thousand (1,000) square feet in mitigation under total size that do not have the subsection C3. characteristics described in subsection B1c above

A wetland with a moderate level of function is one that scores 20 to 28 points for habitat function when rated according to Washington State Ecology publication #04-06-025. A wetland with a high level of function for habitat is one that scores of 29 to 36 points for habitat function when rated according to Washington State Ecology publication #04-06-025.

c. Wetlands constructed in upland areas or non- wetland areas by any person for stormwater control, biofiltration or aesthetic purposes are not subject to the wetland buffer requirements of this chapter. Maintenance activities are not restricted in these types of wetlands.

2. Development is prohibited in wetland buffers, except as approved by the Director under subsection D.

3. The Director may authorize development in a Category IV wetland under one thousand (1,000) square feet that does not have the characteristics described in subsection B1c above, when the Director finds that one of the following measures, which must occur on site, will mitigate wetland function lost by development:

- a. Construct a wetland of equal function to the lost wetland function.
- b. Plant an area of native vegetation equal or greater in size to the area of the developed wetland, and remove invasive species in the area to be planted.
- c. Construct a bioengineered/ infiltration facility, such as a bioswale, stormwater planter or infiltration planter, that replicates the hydrologic and/or water quality benefit of the developed wetland. This facility shall be designed according to the requirements of Title 22, Subtitle VIII, Stormwater, Grading and Drainage Control Code.

d. Construct a eco-roof or roof garden that replicates the hydrologic and/ or water quality benefit of the developed wetland. These facilities shall be designed according to the requirements of Title 22, Subtitle VIII, Stormwater, Grading and Drainage Control Code.

~~€ 4. Buffer Vegetation and Restoration.~~

~~1. Natural Buffer. If the vegetation within the buffer is generally in a natural state that prevents erosion, protects water quality, and provides a diverse habitat, the retention of the buffer's existing vegetation shall be required.~~

~~a. Removal of, clearing, or any action detrimental to habitat, trees or vegetation in the wetland buffer is prohibited, except as provided in subsection D and Section 25.09.320.~~

~~2. Buffer Restoration. If the vegetation within the buffer has been previously disturbed or degraded, the preparation of a plan to enhance the buffer through replanting or augmenting the existing vegetation with native native or similar plants plants may be required by the Director. Any revegetation plan shall be prepared by a qualified professional with landscaping, plant ecology, or botany education and experience. The plan shall be approved by the Director. Vegetation shall not be removed or otherwise disturbed until the applicant is ready to replant immediately.~~

~~3. Buffer Revegetation Exemptions. The Director shall allow the removal by hand of i~~

~~b. Invasive plants and noxious weeds ,such as purple loosestrife, may be removed by hand. No machines or chemical removal shall be permitted without the Director's approval.~~

~~E:D. Buffer Averaging and Buffer Reductions.~~

~~1. Buffer Width Averaging. The Director may modify the standard wetland buffer width by averaging buffer widths when a qualified wetlands professional demonstrates to the Director's satisfaction that:~~

~~a. It will not reduce wetland functions or values;~~

~~b. The total area contained in the buffer area after averaging is no less than that which would be contained within the buffer required in subsection C above; and~~

~~c. The buffer width is not reduced to less than the following:~~

~~Category IV wetlands 35 feet~~

~~Category III wetlands with a high level 60 feet of function for habitat~~

~~All other Category III wetlands 40 feet~~

~~Category I and II wetlands with a high 140 feet level of function for habitat~~

~~All other Category I and II wetlands 75 feet~~

~~A high level of function for habitat shall be determined as set out in Subsection C1 above.~~

~~Đ2. Buffer Reductions, on Existing Lots. Buffer reductions on existing lots may only be allowed after the Director has determined that the front or rear yard or setback reduction or variance provisions of Section 25.09.280 will not provide sufficient relief.~~

~~a. The Director may reduce a Category IV wetland buffer when the applicant qualifies for a variance by demonstrating that:~~

(1) the lot where the buffer is located was in existence before October 31, 1992;

(2) the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full buffer; and

(3) either the site does not meet the criteria for buffer averaging under subsection D1 or such averaging does not relieve the hardship that was found under subsection 25.09.280 B2.

b. If any buffer reduction is authorized by a variance under subsection D 2a, the Director shall

(1) require the Category IV wetland to be restored on site in a manner that improves water quality, hydrology and habitat functions. Restoration must comply with subsections F and G below and with the Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 1994 (#94-29); and

(2) determine the amount of wetland buffer to reduce by applying the buffer averaging to the extent possible under subsection D1 and reducing the yards and setbacks before reducing the wetland buffer, unless reducing the yards or setbacks is injurious to safety. The wetland buffer shall be reduced by the minimum amount to mitigate the hardship, but never to less than thirty five feet (35');and

(3) impose additional conditions on the location and other features of a proposed development as necessary to carry out the purpose of this chapter and to mitigate the loss or reduction of the yard, setback or buffer.

c. The process and procedure for a variance under this subsection D2 shall be as prescribed for Type II land use decisions in Chapter 23.76.

~~1. The Director may reduce a wetland buffer on existing lots only if the front or rear yard or setback reduction provision of Section 25.09.280 A does not provide sufficient relief to allow placement of an adequate structure and maintain the full width of the required wetland buffer.~~

~~2. The Director may further reduce a front or rear yard or setback through an Environmentally Critical Areas Yard or Setback Reduction Variance pursuant to the provisions of Section 25.09.280 B. If, during the review of this variance, the analysis shows that additional front or rear yard or setback reductions would not meet the criteria for variance approval and/or would not provide sufficient relief to allow placement of an adequate structure and maintain the full wetland buffer requirement, the Director may either approve reduction of the wetland buffer only or reduction of both yards or setbacks and the wetland buffer. The wetland buffer reduction shall be the minimum amount necessary, but never less than the twenty-five-foot (25') minimum buffer, to provide for use of the property and to prevent harm to the wetland.~~

~~3. The Director may reduce a wetland buffer only for wetlands which are determined to be degraded under the following circumstances:~~

~~a. If the degraded portion of the wetland is restored on site at a four to one (4:1) ratio, restored land area to reduced buffer, for wetlands larger than fifteen hundred (1,500) square feet; and at a two to one (2:1) ratio for wetlands under fifteen hundred (1,500) square feet; and~~

~~b. Such buffer reduction adjacent to the degraded wetland shall not result in a buffer of less than twenty-five feet (25') and does not apply to the wetland itself.~~

~~E Constructed Wetlands. Wetlands constructed by a private interest or public agency for stormwater control, biofiltration or aesthetic purposes shall not be subject to the wetland buffer requirements of this chapter. Maintenance activities shall not be restricted. This does not apply to wetlands constructed for mitigation or replacement purposes.~~

E. Avoidance and Mitigation Standards.

1. The standards for wetland mitigation shall be applied in following order of priority:

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

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

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

2. Mitigation for grading, filling, or draining wetlands shall achieve the equivalent or better biologic functions of the existing wetland. Mitigation plans shall be consistent with the Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 1994 (#94-29).

3. Wetland mitigation actions shall not result in a net loss of wetland area unless the following criteria are met as determined by a site-specific function assessment:

a. The lost wetland area provides only minimal functions and the mitigation action(s) results in a net gain in wetland functions; or

b. The lost wetland area provides only minimal functions and other replacement areas provide greater benefits to the functioning of the watershed, such as riparian habitat restoration and enhancement.

4. Mitigation actions that require compensation by replacing, enhancing, or substitution, shall occur in the following order of preference:

a. Restoring wetlands on sites that were formerly wetlands.

b. Creating wetlands on disturbed sites, such as those with vegetative cover consisting primarily of exotic introduced species.

c. Enhancing wetlands and/or wetland buffers with significantly degraded functions and values. The amount of required enhancement is dependent on the wetland classification in subsection 5.

5. a. The following ratios are required for the restoration, creation or enhancement of wetlands for authorized alterations. As determined by the Director, wetland mitigation may include the preservation and enhancement of habitat if it provides greater ecological function than the existing wetland. The first number specifies the area of replacement wetlands, and second specifies the area of wetlands altered:

Restoration or Creation Enhancement Ratios Ratios

Category I 6:1 16:1

Category II 3:1 16:1

Category III 2:1 8:1

Category IV 1.5:1 6:1

b. Replacement ratios may be increased under the following circumstances to achieve the equivalent wetland function of the wetland that is altered:

(1) Uncertainty exists as to the probable success of the proposed restoration or creation; or

(2) A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site; or

(3) Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted.

c. Replacement ratios may be decreased when the proposed mitigation actions are conducted in advance of the impact and result in no net loss in wetland functions.

F. Mitigation Timing. Any restoration, creation or enhancement of wetlands that is required as mitigation shall be completed prior to issuance of the certificate of occupancy for the displacing use. If that has not occurred or if no certificate of occupancy is needed, the applicant shall submit plans that establish a specific schedule for completion, which must be approved by the Director, and shall provide a bond of at least one hundred and fifty percent (150%) of the cost of installation, in addition to the monitoring plan and bond required under subsection G. If the required mitigation can be completed for less than five thousand dollars (\$5,000), no bond is required under subsection F or G.

G. A monitoring plan shall be prepared to monitor successful re-establishment of the wetland for a period of five growing seasons or the period required to achieve the performance standards of the plan, whichever is earlier. The applicant shall provide a bond in an amount of at least one hundred fifty percent (150%) of the cost to retain a qualified wetlands scientist to assess the wetland and submit a report to the City at least twice yearly, prior to and near the end of each growing season and shall also provide a bond in an amount sufficient to implement additional restoration measures if the replacement wetland does not equal the functions of the wetland displaced at the end of five growing seasons.

FH. Other Agency Regulations. Review of projects subject to the wetland provisions of this chapter shall be coordinated by the applicant with the appropriate state and federal agencies. ~~Washington State Departments of Fisheries or Wildlife when hydraulic project approval is required, and the U.S. Army Corps of Engineers when they have jurisdiction under Section 404 of the Federal Clean Water Act~~ The applicant shall be encouraged to ~~should~~ make early contact with these agencies to ensure compliance with local, state and federal ~~riparian corridor~~ regulations.

I. In addition the information provided pursuant to Section 25.09.330 and to Director's Rule, the Director may require third-party review when the professional opinions of the applicant's representative and the Department's reviewers cannot be reconciled. The third party review will be conducted by a qualified wetland consultant hired by the Director and paid for by the applicant.

25.09.180 Development standards for steep slopes areas.

A. This section and Section 25.09.080 apply to parcels containing a steep slope area or buffer.

B. ~~A. Development Limitations on Steep Slopes and Buffers on Existing Lots~~ Impacts on Steep Slope Areas.

1. ~~Development shall be avoided on areas over forty percent (40%) slope whenever possible~~ is prohibited on steep slope areas, unless the applicant demonstrates that the provisions of subsections B2 or E apply.

2. ~~Generally, the Director shall require a~~ Provided that all the provisions of this chapter and all applicable provisions of Title 23 and Title 22, Subtitle VIII, are met, the development standards in subsection B 1 do 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 (c) and (d). The geotechnical report is subject to the provisions for third party review in Section 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 feet (20') in vertical rise and that are thirty feet (30') 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 the development standards in subsection B1 would prevent necessary stabilization of a landslide-prone area.

C. Buffers.

1. Steep slopes have fifteen-foot (15') buffers

~~from the top or and toe of a slope unless the Director determines whenever practicable that a greater or lesser buffer is required based on geotechnical and hydrological site constraints and the impacts of proposed construction methods on the stability of the slope, increased erosion potential, and disruption of existing topography and vegetation. The width of the buffer may be increased or decreased as determined by the Director based on the following considerations:~~

- a. Proposed construction method and its effect on the stability of the slope and ~~increased~~ erosion potential;
- b. Techniques used to ~~minimize~~ keep the disruption of existing topography and vegetation to a minimum; and
- c. Preparation of technical reports and plans to address and propose remedies regarding soils and hydrology site constraints.

2. Development is prohibited on steep slope area buffers, except as authorized in subsection B2 or to provide access to such an area, which shall be kept to a minimum, and except as provided in subsection E.

~~3. When it is not practicable to avoid development on areas over forty percent (40%) slope and the buffer area, the following conditions shall apply:~~

- ~~a. Grading and development activity and other land disturbing activity shall not exceed thirty percent (30%) of the areas measured over forty percent (40%) slope. This shall not include vegetation removal for the purposes of replacing existing vegetation with more suitable plants; and~~
- ~~b. The Director may impose conditions concerning the type and method of construction that reflect the specific constraints of the site, as well as the landslide-prone area regulations of this chapter, Section 25.09.080 A.~~

~~B. Vegetation Removal and Replanting. Removal of vegetation in steep-slope areas shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.~~

D. Vegetation Removal and Replanting. If removal of trees or vegetation in a steep slope area and its buffer is authorized as part of approved development, it shall be kept to a minimum, and shall be carried out pursuant to a tree and revegetation plan described in section 25.09.320. Other removal of, clearing, or any action detrimental to trees or vegetation in a steep slope area or buffer is prohibited, except as provided in Section 25.09.320. In addition to complying with Section 25.09.320, any replanting that occurs shall consist of plants native to the Pacific Northwest and

vegetation appropriate for the site conditions.

~~C. Site Design Guidelines. The following guidelines shall be followed for development in steep-slope areas:~~

- ~~1. Structures should be designed and placed on the hillside to minimize negative impacts, such as grading and land disturbing activity;~~
- ~~2. Driveways and utility corridors should be minimized through the use of common access drives and corridors where feasible. Roads, walkways, and parking areas should be designed parallel to topographic contours with consideration given to maintaining consolidated areas of natural topography and vegetation. Access should be located in a way that minimizes impacts to steep slopes or other critical areas;~~
- ~~3. Development should be located on the least sensitive portion of the site to preserve the natural land forms, geological features, and vegetation;~~
- ~~4. Terracing of land shall be kept to a minimum; and~~
- ~~5. Cluster development may be allowed pursuant to the provisions of Section 25.09.260 to emphasize the existing topography and conserve existing resources if compatible with the surrounding residential character.~~

~~D. Steep Slope Exemptions:~~

- ~~1. Highly Developed Areas. Existing lots, short subdivisions and subdivisions may be exempted by the Director from steep-slope regulations when located in highly developed and urbanized areas. Highly developed and urbanized areas include all Downtown and Highrise zones. Sites located in Midrise and Commercial 1 and 2 zones may also qualify for this exemption when surrounding lots contain high-density residential development and/or concentrated commercial development which closely matches the development potential for the zone. This exemption shall not apply to single-family, lowrise, neighborhood commercial, industrial, or any other zones. If the site is characterized by or adjacent to at least one (1) of the following areas, this exemption shall not apply:~~
 - ~~a. A wetland over one thousand five hundred (1,500) square feet in size, or a stream or creek designated as a riparian corridor;~~
 - ~~b. A large undeveloped steep-slope system; or~~
 - ~~c. Areas designated by the Washington Department of Wildlife as urban natural open space habitat areas or other large areas with significant tree cover that provides valuable wildlife habitat.~~
- ~~2. Steep Slopes Resulting from Rights-of-way Improvements. Steep slopes resulting from street, alley, sidewalk and other typical rights-of-way improvements, including rockeries or retaining walls, may be exempted from compliance with the environmentally critical areas regulations. This exemption shall not extend beyond the cut or fill created by the street, alley, sidewalk or other rights-of-way improvement, and does not release the applicant from any applicable geotechnical review requirements under the Stormwater, Grading and Drainage Code. This exemption shall not be allowed for short subdivision or subdivision applications.~~
- ~~3. Previously Developed Sites. Sites that have been previously developed may be exempted by the Director from steep-slope requirements under the following conditions:~~
 - ~~a. If the objectives of the steep-slope regulations would not be compromised; and~~
 - ~~b. If the degree of nonconformity with the environmentally critical areas regulations, if applicable, is not increased. This exemption shall not be allowed for short subdivision or subdivision applications.~~
- ~~4. Limited Exemptions. Slopes with a vertical elevation change of up to twenty feet (20') and not part of a larger steep-~~

~~slope system, or slopes which have been created through previous, legal grading activities, may be exempted by the Director from the steep-slopes regulations based on a geotechnical report demonstrating that no adverse impact will result from the exemption.~~

~~5. Stabilization of Landslide-prone Area. Certain steep slopes may be exempted from the steep slope regulations upon the Director's determination, based on geotechnical expertise, that application of the regulations would prevent necessary stabilization of a landslide-prone area, subject to the provisions of Section 25.09.080 C, Third-party Review.~~

~~6. Any project receiving an exemption shall be subject to steep-slope drainage control and vegetation removal regulations, as well as applicable landslide-prone area regulations of this chapter.~~

E. 1. Steep Slope Area Variance. The Director may reduce the steep slope area buffer and may authorize limited intrusion into the steep slope area and steep slope buffer to the extent allowed in subsection E2 only when the applicant qualifies for a variance by demonstrating that:

a. the lot where the steep slope or steep slope buffer is located was in existence before October 31, 1992; and

b. the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.

2. If any buffer reduction or development in the critical area is authorized by a variance under subsection E1, it shall be the minimum to afford relief from the hardship and shall be in the following sequence of priority:

a. reduce the yards and setbacks, to the extent reducing the yards or setbacks is not injurious to safety;

b. reduce the steep slope area buffer;

c. allow an intrusion into not more than thirty percent

(30%) of the steep slope area.

3. The Director may impose additional conditions on the location and other features of the proposed development as necessary to carry out the purpose of this chapter and mitigate the reduction or loss of the yard, setback, or steep slope area or buffer.

4. The process and procedures for a variance under this subsection E shall be as prescribed for Type II land use decisions in Chapter 23.76.

25.09.200 Development standards for fish and wildlife habitat conservation areas.

~~The characteristics of fish and wildlife habitat conservation areas shall be used to evaluate development within wetlands, riparian corridors and steep slopes. Preserving the integrity of fish and~~

~~wildlife habitat corridors, and minimizing the intrusion of development into these designated habitat areas shall be considered in applications for buffer reductions and conditional use permits to transfer development credit to noncritical portions of a site.~~

A. Development standards for parcels with riparian corridors.

1.a The provisions of this subsection A apply to all development on parcels containing riparian corridors as defined in Section 25.09.020 D5. In addition, the provisions of subsection C apply to these parcels, except subsection C2 with respect to fish. In the event of an irreconcilable conflict between the provisions of subsection C and this section, 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 chapter. Where past development has encroached into riparian corridors, redevelopment shall be regulated subject to the provisions in Section 25.09.045.

2. Riparian Watercourse.

a. Development is prohibited within or over the watercourse, except as provided in subsection A2b. 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 Seattle Shoreline Master Program, Chapter 23.60, Part X, The Urban Residential Environment. 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. Removal of, clearing, or any action detrimental to habitat, trees or vegetation in the riparian watercourse is prohibited, except as provided in Section 25.09.320.

3. Riparian Management Area.

a. The riparian management area is defined in subsection 25.09.020 D5. Existing public or private streets are excluded from the regulations for the riparian management area, provided that if the provisions of Title 22, Subtitle VIII, the Stormwater, Grading and Drainage Control Code apply, 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 A2 and except under subsections A3b(2), A3c, and A3d.

(2) Removal of, clearing, or any action detrimental to habitat, trees or vegetation in the riparian management area is prohibited, except as provided in subsection c below and Section 25.09.320.

c. Riparian Management Area Vegetation.

(1) If the vegetation in the riparian management area protects the fish habitat and wildlife habitat as they exist on the site at the time development is proposed, including preventing erosion and protecting water quality, the existing vegetation shall remain undisturbed, except as allowed under Section 25.09.320.

(2) If the riparian management area is not functioning in the manner set out in subsection A3c(1) above, the applicant shall prepare and carry out a tree and vegetation plan that augments the existing vegetation with native vegetation to the extent commensurate with the impact of the development on the riparian management area. The plan shall be prepared and executed consistent with Section 25.09.320. Vegetation in the riparian management area shall not be removed or otherwise disturbed until the applicant is ready to immediately replant according to the approved plan. A monitoring plan shall be prepared to monitor the establishment of the vegetation. The plan shall cover five (5) growing seasons or the period needed to successfully carry out the plan, whichever is earlier.

d. In addition to subsections A3b(2) and A3c, development is allowed in the riparian management area on lots existing at the time this ordinance takes effect if the applicant demonstrates that:

(1) the development is in the limited riparian development area, which is the area in the riparian corridor but outside of the watercourse and more than seventy-five feet (75') from the top of the watercourse bank for Type 2 and 3 waters with anadromous fish present for any part of the year, fifty feet (50') from the top of the watercourse bank for Type 2 and 3 waters where anadromous fish are not present for any part of the year and more than fifty feet (50') from the top of the watercourse bank for Type 4 and 5 waters;

(2) the development complies with Section 22.802.016, regardless of the area of land disturbing activity or the size of the addition or replacement of impervious surface, except as provided in subsection 3e; and

(3) any development, including but not limited to coverage by impervious surface, does not exceed 35% of the total area of the limited riparian development area, provided that the maximum lot coverage does not exceed that allowed under Title 23, and except as provided in subsection 3e.

e. When compliance with Section 22.802.016 is required solely based on subsection 3d(2) above, the Director may approve a restoration plan in lieu of requiring compliance with subsections 3d(2) and (3) if the applicant demonstrates that the plan meets the following criteria:

(1) The watercourse or riparian management area function will be restored so that it prevents erosion, protects water quality, and provides diverse habitat; and

(2) The restoration results in greater protection of the watercourse and riparian management area than compliance with subsections 3d(2) and (3).

4. Daylighting Water in Pipes and Culverts.

a. Pursuant to Section 25.09.200 D, the Director may require daylighting pipes and culverts that meet the definition of fish and wildlife corridors in Section 25.09.020 D3c.

b. The City encourages daylighting pipes and culverts connecting Type 1-5 waters that have fish habitat downstream and upstream from the pipe or culvert, and the Director is authorized to modify development standards as set out in subsection 4c b

below when the applicant submits a plan for daylighting such a pipe or culvert that meets the following criteria:

(1) the plan is prepared by a qualified professional;

(2) the ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor area is compatible with and protects the ecological functions of the existing riparian corridor upstream and downstream and does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and

(3) if the plan proposes daylighting the pipe or culvert in a different location on the parcel from its current location or off the parcel, the ecological functions required in subsection (2) above are provided as effectively as they would be without the relocation.

c. If the Director finds the conditions in subsection 4b are met, the Director may modify the following development standards. The modification shall be the minimum to provide sufficient area to meet the standards in subsection 4b and shall be in the following order of priority:

(1) Yard and/or setback requirements on the property may be reduced, unless reducing them is injurious to safety.

(2) The riparian corridor watercourse and adjacent area maintained as a riparian management area under the approved plan may count toward open space requirements for all multifamily or commercial zone requirements.

(3) Required parking may be reduced up to twenty five percent (25%).

(4) The riparian management area may be reduced.

d. Nothing in this subsection alters the rights of the owner of the pipe or culvert, if that person is not an applicant for a permit.

5. Other Agency Regulations. Review of projects subject to the riparian corridor provisions of this chapter shall be coordinated with the Washington State Department of Fish and Wildlife when hydraulic project approval is required, and the U.S. Army Corps of Engineers when they have jurisdiction under Section 404 of the Federal Clean Water Act. The applicant is encouraged to make early contact with these agencies to ensure compliance with local, state and federal riparian corridor regulations.

B. Development Standards for Shoreline Habitat.

1. The provisions of this subsection B apply to all parcels with shoreline habitat defined in subsection 25.09.020 D6 or its buffer.

2. In addition, the provisions of subsection C below apply to parcels with shoreline habitat or its buffer, except subsection C2 with respect to fish. In the event of an irreconcilable conflict between the provisions of this subsection B and subsection C, the provision most protective of wildlife habitat applies.

3. Development is prohibited in shoreline habitat, except when all of the following criteria are met:

a. The development is allowed under Title 23, including chapter 23.60, the Shoreline Master Program; and

b. Mitigation is provided for all impacts to the ecological functions of fish habitat on the parcel resulting from any permitted increase in or alteration of existing overwater coverage.

4. Buffers.

a. Shoreline habitat has a one hundred foot (100') buffer from the ordinary high water mark.

b. Bioengineered solutions, such as using plants or other approved natural material, to stabilize the shoreline are allowed in the buffer, provided they are allowed under Title 23, including chapter 23.60, the Shoreline Master Program.

c. Other development for water dependent and water related uses is prohibited in the buffer, except when:

(1) The development is allowed under Title 23, including chapter 23.60, the Shoreline Master Program; and

(2) no vegetation is removed, the amount of impervious surface is not increased, and no surface that is permeable by water at the time of the application will be covered with an impervious surface so that impervious surface will be closer to the ordinary high water mark; or

(3) if any of the actions described in

subsection c(2) above occur and that action impacts the ecologic function of the shoreline, those impacts are mitigated as set out in subsection e below.

If the standards in subsections c(1) and (2) are met, then the application is not subject to the application submittal requirements in Section 25.09.330 and the general development standards in Section 25.09.060.

d. Other development for non-water dependent and non-water related uses is prohibited in the buffer, except when:

(1) The development is allowed under Title 23, including chapter 23.60, the Shoreline Master Program; and

(2) for non-residential uses

(a) the lot was in existence before the effective date of this ordinance; and

(b) the development is twenty five feet (25') or more from the ordinary high water mark unless the development is allowed in the shoreline habitat under Title 23, including chapter 23.60, the Shoreline Master Program; and

(c) (i) no vegetation is removed, impervious surface is not increased and no net loss of ecological function of the critical area or buffer from other actions occurs; or

(ii) if any of the actions described in subsection d(2)(c)(i) above occur, all impacts on the ecological function are mitigated as set out in subsection e below; or

(3) for residential uses the residence is twenty five feet (25') or more from the ordinary high water mark

(a) and no vegetation is removed, impervious surface is not increased and no net loss of ecological function of the critical area or buffer from other actions occurs; or

(b) if any of the actions described in subsection d(3)(a) above occur, all impacts on the ecological function are mitigated as set out in subsection e below.

e. Mitigation.

(1) Mitigation must prevent net loss of ecological function. Mitigation must achieve the equivalent ecologic functions as the conditions existing in the shoreline habitat buffer at the time of development. Mitigation under this section is not intended to duplicate mitigation for the same ecologic function that is required under other City regulations or under state and federal permits. The permit condition most protective of the ecologic function shall be enforced.

(2) For the purpose of this section, mitigation is action that replaces ecological functions lost as a result of a project impact. Depending on the type of lost ecological function these include:

(a) providing habitat, or

(b) creating new pervious ground or

(c) replicates the function of the pervious ground through methods that are engineered and designed according to the requirements of Title 22, Subtitle VIII, Stormwater, Grading and Drainage Control Code.

(3) Mitigation for habitat impacts in the buffer shall occur in the following order of preference:

(a) on the parcel within the buffer as close to the ordinary high water mark as possible;

(b) within the buffer as close to the ordinary high water mark as possible on a parcel that abuts the ordinary high watermark within one quarter (1/4) mile along the shoreline from where the vegetation removal, placement of impervious surface or other loss of habitat occurred;

(c) farther along the shoreline within the buffer as close to the ordinary high water mark as possible.

(4) The following mitigation ratios are required for habitat impacts in the buffer under subsection 2(a) and 2(b); the first number specifies the area of replacement habitat, and second specifies the area of altered habitat:

(a) 1:1 for areas on the parcel or on a parcel that abuts the ordinary high water mark within one quarter (1/4) mile along

the shoreline from where the vegetation removal, placement of impervious surface or other loss of habitat occurred. If the applicant demonstrates that the ecological function can be replaced at a different ratio, the Director may approve that ratio.

(b) 3:1 farther along the shoreline, provided that if a five (5) year bonded monitoring program is provided that monitors the effectiveness of mitigation measures and provides a means for ensuring the attainment of the goals of the program, the Director may approve a 2:1 ratio.

5. Bulkheads.

a. New bulkheads are prohibited, except when the bulkhead is necessary to the continued operation or expansion of a water dependent or water related use.

b. Major repair of existing bulkheads is prohibited, except when

(1) the bulkhead is necessary to the continued operation or expansion of a water dependent or water related use; or

(2) a bioengineered solution, such as using plants or other approved natural material to stabilize the shore, will not achieve the same level of shoreline stabilization and property protection.

6. Streets.

a. Existing public or private streets are excluded from these buffer regulations, provided that if the provisions of Title 22, Subtitle VIII, the Stormwater, Grading and Drainage Control Code apply, the Director shall require adequate stormwater detention to prevent harm from the street to habitat and to keep degradation of water quality for habitat to a minimum.

b. New streets are allowed when the following criteria are met:

(1) the street is allowed under Title 23, including chapter 23.60, the Shoreline Master Program; and

(2) no vegetation is removed, impervious surface is not increased, and no net loss of ecological function of the critical area or buffer from other actions occurs; or

(3) if the actions described in subsection (b)(2) above occur, any impacts on the ecological function are mitigated as set out in subsection 4e above.

7. The following provisions apply to all parcels containing shoreline habitat and buffers to prevent impacts to the habitat and buffer:

a. Any increases in surface runoff from development shall be kept to a minimum, and surface water run off shall be controlled, treated and released so that receiving water quality and any shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch basins or settling ponds, interceptor drains and planted buffers. Allowable means to achieve this include bioswales, catch basin filters, and other methods prescribed in Title 22, Subtitle VIII, the Stormwater, Grading and Drainage Control Code.

b. Pavement in the habitat and buffer shall be kept to a minimum and permeable surfacing, where practicable, shall be used to keep surface water accumulation and runoff into the habitat and buffer to a minimum. Recommended methods are found in Title 22, Subtitle VIII, Stormwater, Grading and Drainage Control Code. Permeable surfaces include, but are not limited to, porous asphalt, concrete, brick, or pavers; or plastic confinement systems with grass or gravel filler.

c. Best management practices shall be employed for the safe handling of fuels and toxic or hazardous materials to prevent them from entering the water. Direct runoff of these materials is prohibited. Best management practices shall be employed for prompt and effective clean-up of any spills that do occur. A spill prevention and response plan may be

required by the Director.

d. Any cleaning or resurfacing operation occurring over water that may result in the entry of debris, such as paint chips, shall employ tarpaulins securely affixed above the water line to prevent material from entering the water. Prior to removing the tarpaulins, the accumulated contents shall be removed by vacuuming or an equivalent method that prevents material from entering the water.

e. No over-water application of paint, preservative treatment, or other chemical compounds is permitted, except in accordance with best management practices.

f. Wooden components that will be in contact with standing water or floodwaters shall not contain polycyclic aromatic hydrocarbons (PAH), creosote, pentachlorophenol, or similar toxic substances. Durable, non-toxic components is the preferred material for in-water and over-water structures. Where treated wood is considered necessary, it shall be applied and used in accordance with the American Wood Preserver Association (AWPA) standards for aquatic use.

g. For projects involving concrete, a concrete truck chute cleanout area shall be established to contain wet concrete. No concrete or clean out shall be allowed to enter the water body. This does not prohibit piers or other concrete structures authorized by a valid permit.

h. All inlets and catch basins shall be protected from fresh concrete, paving, paint stripping and other high-risk pollution generating activities during construction.

i. Construction staging areas shall be as far from the ordinary high water mark as practicable.

j. Planting native vegetation may be required to mitigate impacts of development on the shoreline habitat or buffer.

k. If at any time project-related activities cause a fish kill to occur, the permittee shall stop all work relating to the fish kill and immediately notify the Department of Planning and Development, Washington Department of Fish and Wildlife, and the Washington Department of Ecology.

l. In- and over-water structures shall be designed and located to keep impacts from shading of any bank and shallow water habitat to a minimum.

8. Removal of, clearing, or any action detrimental to habitat, trees or vegetation in shoreline habitat or its buffer is prohibited, except as authorized under subsections 1-6 above and section 25.09.320.

C. 1. Development on parcels containing fish and wildlife habitat conservation areas shall comply with any species habitat management plan set out in a Director's Rule. The Director may establish by rule a species habitat management plan to protect any priority species identified by the Washington State Department of Fish and Wildlife or to protect species of local importance.

2. Any person proposing development on a parcel containing fish and wildlife habitat conservation areas shall consult with the Washington State Department of Fish and Wildlife and comply with any requirements of that agency, except as limited in subsections A and B above.

D. Based on information provided by a qualified wildlife

biologist, the Director may condition development on parcels containing wildlife habitat or corridors defined in subsection 25.09.020 D3 to protect fish or wildlife habitat corridors. Conditions may include, but are not limited to:

1. Establishment of buffer zones;

2. Preservation of important vegetation and habitat features;

3. Limitation of access to habitat areas;

4. Seasonal restriction of construction activities;

5. Preservation of the ability for fish to pass between fish habitat in Type 1-5 waters upstream and downstream of the parcel. The application requirements and general conditions of this chapter, 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 alters the rights of the owner of the pipe or culvert, if that person is not an applicant for a permit.

6. Requiring the developer to daylight a pipe or culvert defined in SMC 25.09.020 D3c, when the conditions in subsection 6a below are met. When requiring daylighting, the Director is authorized to modify the conditions set out in subsection 6b below. Nothing in this subsection alters the rights of the owner of the pipe or culvert, if that person is not an applicant for a permit.

a. The Director may require daylighting under the following conditions:

- (1) When the existing pipe or culvert cannot remain in its current location and provide an effective passage for anadromous fish due to the development.
- (2) Other methods for preserving fish passage such as pipe or culvert placement or site engineering are not feasible.

b. If daylighting is required then the applicant

must prepare a plan that demonstrates the following:

- (1) The ecological functions of the daylighted waters and resulting new riparian management area are compatible with and protect the functions of pipes and culverts upstream and downstream and the ecological functions of the existing riparian corridor upstream and downstream and do not contribute to flooding.
- (2) The ecological functions include preventing erosion, protecting water quality, and providing diverse habitat.

c. The Director determines that daylighting the pipe or culvert and the impacts from the development to fish passage on the parcel are roughly proportionate.

d. When requiring daylighting, the Director is authorized to modify the following conditions:

- (1) Yard and/or setback requirements on the property may be reduced to provide sufficient area for daylighting and creating a riparian management area, unless reducing them is injurious to safety.
- (2) The riparian corridor watercourse and riparian management area may count toward open space requirements for all multifamily or commercial zone requirements.
- (3) Required parking may be reduced up to twenty five percent (25%).
- (4) The riparian management area may be reduced to the extent needed to provide sufficient area for the plan described in subsection 6a(2) above.

E. Designating Species of Local Importance and their Habitat.

1. The Director on an annual basis shall accept and consider nominations for species of wildlife and their habitat to be designated as locally important. The designation of a species of local importance and its habitat shall require an amendment to this chapter.

2. Species or habitat to be designated shall exhibit the following characteristics:

a. Local populations of native species are in danger of extinction based on existing trends:

(1) Local populations of native species that are likely to become endangered; or

(2) Local populations of native species that are vulnerable or declining;

b. The species has recreational, commercial, game, tribal, or other special value;

c. Long-term persistence of a species is dependent on the protection, maintenance, and/or restoration of the nominated habitat;

d. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in Seattle;

e. Areas nominated to protect a particular habitat or species have either high-quality habitat or habitat with a high potential to recover to a suitable quality, and the habitat is limited in quantity, highly vulnerable to alteration, or connects habitats.

3. Species and habitats may be nominated for designation by any person. Nominations shall be in writing, address the characteristics listed in subsection 2, and state whether specific habitat features are being nominated (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety. Where restoration of habitat is proposed, a specific plan for restoration shall be provided with the application, or the nomination shall include management strategies for the species or habitats. Restoration plans and management strategies shall be supported by the best available science.

4. The Director shall determine whether the nomination proposal is complete, and if complete, shall evaluate it under the criteria in subsection (2) and make a recommendation to the Mayor and Council based on that information. If the nomination is adopted, the Director may establish habitat restoration plans and habitat and species management strategies by rule.

25.09.220 Development standards for abandoned landfills.

A. Regulation of Development on Abandoned Landfills. Development on abandoned landfills ~~shall be~~ is subject to Seattle-King County Health Department requirements for the applicant to submit an excavation and development work plan, prepared by a licensed engineer with experience in landfill construction and/or management, and comply with other applicable requirements to prevent damage from methane gas buildup, subsidence, and earthquake induced ground shaking as contained in ~~SMC~~ Title 22, Subtitle VIII, ~~Stormwater~~, Grading and Drainage Control ~~Ordinance Code~~, ~~SMC~~ Title 22, Subtitle I, Building Code, and regulations pertaining to development on abandoned landfill sites. Technical studies shall be required to indicate whether these areas pose a threat to development on an abandoned landfill site.

B. Areas within One Thousand Feet (1,000') of Methane-producing Landfills. Areas within one thousand feet (1,000') of methane-producing landfills may be susceptible to ~~methane leakage~~ accumulations of hazardous levels of methane gas in enclosed spaces. Methane barriers or appropriate ventilation may be required in these areas as specified in ~~SMC~~ Title 22, Subtitle VIII, ~~Stormwater~~, Grading and Drainage Control ~~Ordinance Code~~, ~~SMC~~ Title 22, Subtitle I, Building Code, and Seattle-King County Health Department regulations.

25.09.240 Short subdivisions and subdivisions.

A. This section applies to ~~All applications for~~ short subdivisions and subdivisions, excluding unit lot subdivisions, ~~proposals located in on parcels containing any part of a riparian corridor, buffers, shoreline habitat, shoreline habitat~~

~~buffers, wetlands, and wetland buffers, or and steep slopes areas (over forty percent (40% shall comply with the following specified development standards in addition to the standards set forth in Subtitle III, Platting Requirements, of SMC Title 23, Land Use Code:~~

~~AB. New lots shall contain~~ Parcels shall be

divided so that each lot contains at least one (1) an area for building site the principal structure, all accessory structures, and necessary walkways and for access to the site this area that is are outside the identified all environmentally critical areas and its required buffers identified in subsection A above except as follows:

1. The required area and access may be located in the footprint of an existing lawful principal structure used for residential use that encroaches into an environmentally critical area or buffer identified in subsection A, provided it does not further alter or increase the impact to the environmentally critical area or buffer.

2. that aAccess may be provided by a bridge over a riparian corridor watercourse and buffer as long as when the Director determines no other access is available and (a) access is provided by provided it is a freestanding structure that maintains the natural channel and floodway of the watercourse and minimizes (b) the disturbance of the riparian corridor and any other adjacent environmentally critical area or buffer to the greatest extent practicable. is kept to a minimum. Covenants shall be recorded with the subdivision or short subdivision that restrict development to the areas specified on the approved site plan.

3. Development may encroach into that portion of a steep slope area or its buffer for which the Director has determined that criteria in subsection 25.09.180 B2a, b, or c are met for the particular short subdivision, or subdivision under consideration.

4. Development may encroach into the Shoreline habitat buffer provided that

a. a condition is recorded on the plat restricting the development in the buffer to water dependent or water related uses or to single family residential uses; and

b. for single family residential uses the condition requires each residence to be no further waterward than twenty five feet (25') from the ordinary high water mark; and

c. a condition is recorded on the plat (1) requiring mitigation at the time of development for removal of vegetation, addition of impervious surface, and all other harm to the ecological function of the buffer and habitat resulting from development and (2) setting out on the plat the mitigation standards in subsection 25.09.200 B4e.

C. Lots shall be configured to preserve the environmentally critical areas and their buffers identified in subsection A by:

1. Establishing a separate buffer tract or lot with each owner having an undivided interest; or

2. Establishing non-disturbance areas on individual lots.

D. The environmentally critical areas and buffers identified in subsection A above, except for areas qualifying for development under subsection B1-4, shall be designated non-disturbance areas on the final plat. A notice that these non-disturbance areas are located on the lots, including the definition of "non-disturbance area," shall recorded in the King County Office of Records and Elections along with the final plat in a form approved by the Director. At the same time, a covenant protecting non-disturbance areas shall be recorded as set out in Section 25.09.335.

B. Lots shall be configured to preserve the identified environmentally critical area and its buffer by:

1. Establishing a separate buffer tract or lot with each owner having an undivided interest; or

2. Establishing buffer easements on individual lots.

CE. In computing the number of lots a parcel in a single family zone may contain, the Director shall exclude the following areas:

1. Easements and/or fee simple property used for shared vehicular access to proposed lots that are required under Section 23.53.005, shall not be counted when calculating minimum lot area requirements.

D2. The area of the identified environmentally critical areas and their required buffers identified in subsection A, unless they are on a lot that meets one of the following standards: areas within a proposed subdivision or short subdivision shall receive no development credit for use in calculating the number of lots permitted.

a. the provisions of subsection B; or

b. an Administrative Conditional Use is obtained under Section 25.09.260, if it is not practicable to meet the requirements of subsection B considering the parcel as a whole.

EF. Application Submittal Requirements. All short subdivision and subdivision proposals applications, in addition to the application submission requirements included in SMC Title 23, Land Use Code, shall meet the applicable application submittal requirements of this chapter, subsection A of Section 25.09.060330, and shall include the information contained in this subsection and Section 25.09.260, as applicable, on the surveyed site plan.

25.09.260 Environmentally critical areas Administrative conditional use permit to recover development credit and permit clustered development on-site in single-family zones.

Up to full development credit on-site (determined by calculating the maximum number of lots allowed based on the underlying single-family zoning and size of the originating property) may be granted by the Director through an administrative conditional use permit, authorized under SMC Section 23.42.042, Conditional uses, in the Land Use Code. Notice of application and review process and procedures for this administrative conditional use and of the Director's decision on the application shall be provided in the manner

prescribed for Type II land use decisions as set forth in SMC Chapter 23.76.

B. The Director may approve, condition or deny an application for an administrative conditional use. The Director's decision shall be based on a determination of whether the proposed transfer of development credit within the site meets the criteria for allowing the specific conditional use and whether the use will be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

C. In authorizing an administrative conditional use, the Director may mitigate adverse negative impacts by imposing requirements and conditions deemed necessary for the protection of other properties in the zone or vicinity in which the property is located.

D. The Director shall issue written findings of fact and conclusions to support the Director's decision. The Director's decision pursuant to this section may be appealed to the Hearing Examiner according to the procedures provided for appeals of Master Use Permit decisions in SMC Section 23.76.022.

E. The Director may approve the transfer of development credit if it can be shown that the development would meet the following conditions and findings:

1. The transfer of development credit shall not result in any significant increase of negative environmental impacts, including erosion, on the identified environmentally critical area and its buffer;

2. The development shall be reasonably compatible with neighborhood characteristics. This shall include but not be limited to concerns such as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining;

- ~~3. In no case shall development credit be allowed for the area covered by an open water area of a wetland or riparian corridor;~~
- ~~4. The development shall retain and protect vegetation on designated undisturbed areas on and off site. Significant species or stands of trees shall be protected, and tree removal shall be minimized. Replacement and establishment of trees and vegetation shall be required where it is not possible to save trees;~~
- ~~5. The ability of natural drainage systems to control the quality and quantity of stormwater runoff shall not be significantly impaired;~~
- ~~6. The development shall not adversely affect water quality and quantity, erosion potential, drainage, and slope stability of other environmentally critical areas located in the same drainage basin;~~
- ~~7. The development's site plan shall include measures to minimize potential negative effects of the development on the undeveloped portion of the site, including the provision of natural barriers;~~
- ~~8. Adequate infrastructure (streets and utilities) shall be available or will be provided; and~~
- ~~9. The site design guidelines of Section 25.09.180 C shall be followed for designated steep-slope areas.~~

~~F. Clustering of Additional Dwelling Units. The Director may approve more than one (1) dwelling unit per lot and may approve smaller than required lot sizes and yards to accommodate recovery of development credit, and to encourage larger buffers, reduce impermeable surfaces, and decrease size of affected areas. Where dwelling units are attached, they shall not exceed the height, bulk and other applicable development standards of the Lowrise 1 (L-1) zone. Full development credit on-site shall not be increased beyond that permitted by the underlying single-family zone.~~

~~G. The Director may require that structures be located on the site in order to preserve or enhance topographical conditions;~~

~~adjacent uses and the layout of the project and to maintain a compatible scale and design with the surrounding community. In order to approve clustered dwelling units in all environmentally critical areas, the following criteria shall be met:~~

- ~~1. Clustering of units shall help to protect the following critical areas: riparian corridors, wetlands and steep slopes;~~
- ~~2. Clustering of units shall require siting of structures to minimize disturbance of the environment;~~
- ~~3. Clustering of units shall help to protect priority species or stands of mature trees;~~
- ~~4. Clustering of units shall ensure maximum retention of topographic features;~~
- ~~5. Clustering of units shall limit location of access and circulation to maximize the protection of an area's natural character and environmental resource;~~
- ~~6. Clustering of units shall help protect the visual continuity of natural greenery, tree canopy, and wildlife habitat;~~
- ~~7. Clustering of units shall not have an adverse impact on the character, design and scale of the surrounding neighborhood; and~~
- ~~8. Clustering of units shall promote expansion, restoration or enhancement of a riparian corridor and its buffer, a wetland and its buffer or a steep-slope area and its buffer.~~

~~H. Additional Conditional Use Provisions for Steep Slopes and Steep-slope Buffers.~~

~~1. In steep-slope areas and their buffers, the Director may allow clustering on the steep-slope portions of the site when the site is predominantly characterized by steep slopes. However, the preference shall be to cluster away from steep-slope and buffer areas.~~

~~2. The Director shall require clear and convincing evidence that the clustering criteria and findings of this subchapter are met when a transfer in development credit within a steep-slope area is also characterized by or adjacent to:~~

~~a. A wetland over fifteen hundred (1,500) square feet in size, or a stream or creek designated as a riparian corridor; or~~

~~b. A large (over five (5) acres) undeveloped steep-slope system; or~~

~~c. Areas designated by the Washington Department of Wildlife as urban natural open space habitat areas or areas with significant tree cover providing valuable wildlife habitat.~~

~~3. Any development permitted through the conditional use process on steep slopes of forty (40) percent shall be subject to the landslide-prone area provisions of this Chapter, Section 25.09.080.~~

A. 1. When the applicant demonstrates it is not practicable to comply with the requirements of Section 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 to allow the Director to count environmentally critical areas and their buffers that would otherwise be excluded in calculating the maximum number of lots and units allowed on the parcel under Section 25.09.240 E.

B. Standards. The Director may approve an administrative conditional use for smaller than required lot sizes and yards, and/or more than one (1) dwelling unit per lot if the applicant demonstrates that the proposal meets the following standards:

1. Environmental Impacts on Critical Areas.

a. No development is in a riparian corridor, shoreline habitat, shoreline habitat buffer, wetland, or wetland buffer.

b. No riparian management area, shoreline habitat buffer, or wetland buffer is reduced.

c. No development is on a steep slope area or its buffer unless the property being divided is predominantly characterized by steep slope areas, or unless approved by the Director under Section 25.09.180 B2a, b or c.

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

(2) The Director shall require clear and convincing evidence that the provisions of this subsection B are met when clustering units on steep slope areas and steep slope area buffers with these characteristics:

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

(b) an undeveloped area over five (5) acres characterized by steep slopes; or

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

d. The proposal protects Washington State Department of Fish and Wildlife priority species and maintains wildlife habitat.

e. The open water area of a shoreline habitat, wetland or riparian corridor shall not be counted in determining the permitted number of lots.

f. The proposal does not result in unmitigated negative environmental impacts, including drainage and water quality, erosion, and slope stability on the identified environmentally critical area and its buffer.

g. The proposal promotes expansion, restoration or enhancement of the identified environmentally critical area and buffer.

2. General Environmental Impacts and Site Characteristics.

a. The proposal keeps potential negative effects of the development on the undeveloped portion of the site to a minimum and preserves topographic features.

b. The proposal retains and protects vegetation on designated nondisturbance areas, protects stands of mature trees, keeps tree removal to a minimum, removes noxious weeds and protects the visual continuity of vegetated areas and tree canopy.

3. Neighborhood Compatibility.

a. The total number of lots permitted on-site shall not be increased beyond that permitted by the underlying single-family zone.

b. Where dwelling units are proposed to be attached, they do not exceed the height, bulk and other applicable development standards of the Lowrise 1 (L-1) zone.

c. The development is reasonably compatible with and keeps the negative impact on the surrounding neighborhood to a minimum. This includes, but is not limited to, concerns such as neighborhood character, land use, design, height, bulk, scale, yards, pedestrian environment, and preservation of the tree canopy and other vegetation.

C. Conditions.

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

2. In addition to any conditions imposed under subsection 1, the following conditions apply to all administrative conditional uses approved under this subsection:

a. Replacement and establishment of native

vegetation shall be required where it is not possible to save trees or vegetation.

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

D. The Director shall issue written findings of fact and conclusions to support the Director's decision. The process and procedures for notice of decision and appeal of this administrative conditional use shall be as prescribed for Type II land use decisions in Chapter 23.76.

~~25.09.280 Environmentally critical areas-~~Yard and setback reduction and variance for existing lots to preserve ECA buffers and riparian corridor management areas.

A. The Director may authorize A a twenty-five percent (25%) reduction, up to a maximum of five feet (5'), in yard or

setback requirements for front or rear yards on a lot in existence as a legal building site prior to October 31, 1992, shall be permitted when necessary in order to maintain the full width of a the riparian management area corridor and of wetland or steep-slope area buffer s.

~~B. The Director may approve Any a yard or setback reduction greater than five feet (5') that is necessary in order to maintain the full width of the a riparian management area, corridor wetland buffer or steep-slope area buffer shall require approval through an environmentally critical areas yard or setback reduction variance .Notice of application and review process and procedures for an environmentally critical areas yard or setback reduction variance and of the Director's decision on the application shall be provided in the manner prescribed for Type II land use decisions as set forth in SMC Chapter 23.76. An environmentally critical areas yard reduction variance shall be authorized only when all the following facts and conditions are found to exist:~~

1. The lot has been in existence as a legal building site prior to October 31, 1992.

~~42. Because of the location of the subject property in or abutting an environmentally critical area or areas; and the size and extent of any required environmentally critical areas buffer, the strict application of the applicable yard or setback requirements of Chapter 25.09-Title 23 would cause unnecessary hardship; and~~

~~23. The requested variance does not go beyond the minimum necessary to maintain to stay out of the full width of the riparian management area or required buffer and to afford relief; and~~

~~34. The granting of the variance will not be injurious to safety or to the property or improvements in the zone or vicinity in which the property is located; and~~

~~45. The yard or setback reduction will not result in a development that is materially detrimental to the character, design and streetscape of the surrounding neighborhood, considering such factors as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining; and~~

~~56. The requested variance would be consistent with the spirit and purpose of the environmentally critical policies and regulations.~~

~~C. When an environmentally critical areas variance is authorized, the Director may attach conditions may be attached regarding the location, character and other features of a proposed structure or use development as may be deemed necessary to carry out the spirit and purpose of SMC Chapter 25.09, Regulations for Environmentally Critical Areas this chapter.~~

D. The process and procedures of an environmentally critical areas yard or setback reduction variance shall be as prescribed for Type II land use decisions in Chapter 23.76.

~~A Director's decision pursuant to this section may be appealed to the Hearing Examiner according to the procedures provided for appeals of Master Use Permit decisions in SMC Section 23.76.022.~~

25.09.300 Environmentally critical area exception.

~~A. An applicant for a City permit to develop real property that abuts or upon which is located in an environmentally critical area or buffer may apply to the Director for an exception to modification of modify environmentally critical area development standards, provided that an exception cannot be applied for to allow development or to obtain development credit under subsection 25.09.240E or to relocate lot lines under Section 23.28.030. Notice of application and review process and procedures for an environmentally critical areas exception and of the Director's decision on the application shall be provided in the manner prescribed for Type II land use decisions as set forth in SMC Chapter 23.76. Before an application for relief under this section will be accepted, the Director must determine that no other applicable environmentally critical areas administrative administrative remedies prescribed in Chapter 25.09 or Title 23 will provide sufficient relief.~~

B. 1. An applicant requesting modification shall provide the Director with the following information:

a. Documentation showing that no other applicable administrative remedy in Title 25.09 or Title 23 will provide sufficient relief;

~~4b.~~ Technical studies and other data that describe the possible injurious effects of the proposed development on occupiers of the land, on other properties, on public resources, and on the environment. Possible injurious effects must be described even when the injurious effect will become significant only in combination with similar effects from other developments; ~~and~~

c. Technical studies and other data by qualified persons showing that the proposed development will protect the occupiers of the land, other properties, public resources, and the environment to the same extent as the development standards that are proposed to be modified and explaining how this will occur;

d. Plans showing what can be developed in compliance with all environmentally critical area development standards and standards in Title 23, including the yard and setback standards for front and rear yards;

~~2e.~~ An explanation with supporting evidence of how and why compliance with the ~~unmodified~~ all environmentally critical areas development standards as shown on the plans required in subsection (d) would not permit any reasonable use of the property-, including, but not limited to, submission of the following evidence:

(1) The date the applicant purchased the property or obtained the right to develop or use it;

(2) The price the applicant paid for the rights described in subsection (1); and

(3) Restrictions or conditions on use or development in existence when the applicant acquired the rights described in subsection (1).

2. The Director may require the applicant to provide additional information prepared by qualified persons on the topics described in subsection B1.

3. All technical studies and data shall be accompanied by sufficiently detailed information to allow the Director to evaluate it under the standards for scientific information set out in Washington Administrative Code (WAC) 365-195-905.

C. The Director may modify ~~or waive~~ an environmentally critical areas development standard and/or the yard and setback standard for front or rear yards when an applicant demonstrates ~~to the Director's satisfaction by clear and convincing evidence~~ that strict application of the development standards would ~~be unreasonable not permit any reasonable use of the property~~ and that development undertaken pursuant to the modified ~~or waived~~ standards would not cause significant injury to occupiers of the land, to other properties, and to public resources, or to the environment.

D. The relief granted by reduction, waiver, or other modification of an environmentally critical areas development standard and of the yard and setback standards for front or rear yards shall be the minimum to allow reasonable use of the property. Preference shall be given to modifying or waiving the yard and setback standards for front or rear yards. In modifying a ~~development standard~~ regulation, the Director may impose reasonable conditions that prevent or mitigate the same harm that the modified ~~or waived~~ regulation was intended to prevent or mitigate. 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.

E. The Director's decision must be consistent with the scientific approach used by the City in developing the environmentally critical area development standard at issue.

F. 1. The process and procedures for notice of decision and appeal of an environmentally critical areas exception shall be provided in the manner prescribed for Type II land use decisions in Chapter 23.76.

~~E2. A Director's decision pursuant to this section may be appealed to the Hearing Examiner according to the procedures provided for appeals of Master Use Permit decisions by SMC Section 23.76.022. The Director's decision as to whether development pursuant to a modified development standard will cause significant injury shall be affirmed unless found to be clearly erroneous. The Director's decision as to whether strict application of a development standard is reasonable shall be given no deference, and the burden of proof of justifying the environmentally critical areas exception shall be on the applicant.~~

~~25.09.320 Vegetation and tree removal permit in environmentally critical areas~~Trees and vegetation.

~~A. Removal, clearing or any action detrimental to trees or vegetation within wetlands, wetland buffers and riparian corridor buffers is prohibited unless the Director has given prior approval to a restoration plan pursuant to buffer restoration, reduction, exemption, or exception provisions contained in this chapter.~~

~~B. Removal, clearing or any action detrimental to trees (including, but not limited to, tree-topping) or vegetation within land-slide-prone, steep-slope, and fish and wildlife habitat areas shall require a permit from the Director when any of the following thresholds are exceeded:~~

~~1. Any tree of six (6) inch caliper or greater, measured three (3) feet above the ground; or~~

~~2. Any combination of trees over one and one-half (1.5) inch caliper, measured three (3) feet above the ground, which total a cross-section area greater than twenty-eight (28) square inches or equivalent to a tree cross-section of six (6) inches; or~~

~~3. Any other combination of trees and other vegetation covering an area of seven hundred and fifty (750) square feet or more.~~

~~C. A vegetation and tree removal permit shall always be required even in cases where an application for a building permit or Master Use Permit has not been submitted. The permit shall only be required for that portion of the site which is designated as environmentally critical as listed in subsection B.~~

~~D. A vegetation and tree removal permit shall not be required when the Director determines there is an emergency that threatens the public health, safety and welfare.~~

~~E. The Director shall consider the following circumstances and conditions in rendering a decision on a vegetation and tree removal permit:~~

~~1. The applicant shall justify the need for tree and/or vegetation removal;~~

~~2. The applicant shall demonstrate that any tree and/or vegetation removal shall not adversely affect stability, erosion potential, existing drainage conditions, and/or fish and wildlife habitat areas on-site, on adjacent sites, or within the drainage basin;~~

~~3. The applicant shall demonstrate that the activity shall not be a precursor of a later development proposal, unless a plan is approved by the Director for public safety reasons and/or except to conduct soil testing subject to DCLU's Director's Rule for Investigative Field Work in Environmentally Critical Areas; and~~

~~4. The Director may require a vegetation and tree removal and replacement plan and may otherwise condition the permit to protect the public health and safety and prevent harm to the affected environmentally critical area.~~

~~F. Normal and routine pruning, maintenance and vegetation management and revegetation on private property which does not exceed the thresholds established in subsection B shall be exempt from a vegetation and tree removal permit.~~

~~G. Normal and routine pruning operations, maintenance, and tree and vegetation management and revegetation of public~~

~~parkland and open spaces by responsible public agencies or departments shall be exempt when undertaken pursuant to best management practices to avoid impacts on environmentally critical areas.~~

~~H. Tree or vegetation removal shown as part of an issued building or grading permit shall not require a separate vegetation or tree removal permit.~~

A. 1. Removing, clearing, or any action detrimental to habitat, vegetation or trees is prohibited, except as provided below, within the following areas: landslide-prone critical areas, (including steep slopes), steep slope buffers, riparian corridors, shoreline habitat, shoreline habitat buffers, wetlands, and wetland buffers.

2. Tree-topping is prohibited.

3. The vegetation and tree removal and revegetation

activities listed in subsections 3a-d are allowed. The application submittal requirements and general development standards in Sections 25.09.330 and 25.09.060 do not apply to actions under subsections 3a, b(1), c(2)(a) or d, provided that no other development is carried out for which a permit is required.

a. Normal and routine pruning and maintenance of:

(1) up to seven hundred and fifty (750) square feet of trees and vegetative cover lawfully maintained prior to the effective date of this ordinance;

(2) trees and vegetation approved by permit prior to the effective date of this ordinance, provided the conditions of the permit are complied with;

(3) lawns, paths and landscaping lawfully maintained prior to the effective date of this ordinance that were not in a environmentally critical area or buffer listed in subsection A1 above prior to the effective date of this ordinance, but are in a listed area or buffer under this ordinance;

(4) steep slope areas described in subsection 25.09.180 B2a-c;

(5) other trees and vegetative cover, provided that when the area of work is over seven hundred fifty (750) square feet in area, a plan is filed with the Department that complies with subsections B2 and 3.

b. Removing trees or vegetation as part of an issued building or grading permit consistent with a tree and revegetation plan, provided that

(1) when the area of work is under one thousand five hundred (1,500) square feet in area, a plan is filed with the Department that complies with subsections B1 and 2; or

(2) when the area of work is one thousand five hundred (1,500) square feet or more in area, a plan that complies with subsections B2 and 3 is filed with the Department, the plan keeps significant environmental impact to a minimum, the Director approves the plan before any disturbance occurs, and the work is performed by or under the direction of a qualified professional.

c. Restoring or improving vegetation and trees, including removing non-native vegetation or invasive plants and noxious weeds by hand, to promote maintenance or creation of a naturally functioning condition that prevents erosion, protects water quality, or provides diverse habitat when

(1) the restoration or improvement is a condition to obtaining a permit or approval from the Director; or

(2) the restoration or improvement is not already a condition to obtaining a permit or approval from the Director, and

(a) when the area of work is under one thousand five hundred (1,500) square feet in area calculated cumulatively over three (3) years, a plan is filed with the Department that complies with subsections B1 and 2; or

(b) when the area of work is one thousand five hundred (1,500) square feet or more in area calculated cumulatively over three (3) years, or if the removal of invasive plants or noxious weeds is by machine or chemicals, a plan that complies with subsections B2 and 3 is filed with the Department, the plan keeps significant environmental impact to a minimum, the Director approves the plan before any disturbance occurs, and the work is performed by or under the direction of a qualified professional.

d. Removing trees or vegetation when the Director determines the tree or vegetation is a threat to health or safety based on a report prepared by a qualified professional and the removal is performed by or under the direction of a qualified professional.

B. Standards for Plans.

1. Plans prepared under this subsection shall be consistent with the Department's standard tree and vegetation plans.

2. When the area of work exceeds seven hundred fifty (750) square feet in a landslide-prone area, the plan shall be approved by a geotechnical engineer or geologist licensed in the State of Washington with experience in analyzing geological hazards related to slope stability and vegetation removal on landslide prone areas. These plans shall be consistent with best management practices.

3. Plans prepared under this subsection shall be prepared by a qualified professional with experience related to the type of environmentally critical area or buffer where work will occur. These plans shall be consistent with best management practices.

25.09.330 Application submittal requirements.

All activities identified in Section 25.09.015 and not exempt from permit application requirements under Sections 25.09.045, 25.09.055, 25.09.200 A4, and 25.09.320 A3 shall meet the following application submittal requirements in addition to the application submittal requirements specified in other codes:

A. Topographic Survey. A topographic site plan, prepared and stamped by a State of Washington licensed surveyor, is required for sites that include landslide-prone, flood-prone, riparian corridor, shoreline habitat or its buffer, wetland or its buffer, and steep slope areas or their buffers. The topographic site plan shall include the following existing physical elements:

1. Existing topography at two-foot (2') contour intervals on-site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;

2. Terrain and stormwater-flow characteristics within the site, on adjacent sites within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;

3. Location of areas with significant amounts of vegetation, and specific location and description of all trees with trunks six inches (6") or greater in diameter measured four feet, six inches (4'6") above the ground, and noting their species;

4. Location and boundaries of all existing site improvements on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements. This shall include the amounts of developmental coverage, including all impervious surfaces (noting total square footage and percentage of site occupied);

5. Location of all grading activities in progress, and all natural and artificial drainage control facilities or systems in existence or on adjacent lands on the site, within twenty-five feet (25') of the site's property lines, and in the full width of abutting public and private rights-of-way and easements;

6. Location of all existing utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on the site, on adjacent lands within twenty-five feet (25') of the site's property lines and in the full width of abutting public rights-of-way; and

7. Such additional existing physical elements information for the site and surrounding area as required by the Director to complete review of a project subject to the standards of Chapter 25.09.

B. Additional Site Plan Information. The following site plan information shall also be required for sites that include landslide-prone, flood-prone, riparian corridor, wetland, and steep slope areas or their buffers. Information related to the location and boundaries of environmentally critical areas and required buffer delineations shall be prepared by qualified professionals with training and experience in their respective area of expertise as demonstrated to the satisfaction of the Director.

1. Location and boundaries of all critical areas on the site and on adjacent lands within twenty-five feet (25') of the site's property lines, noting both total square footage and percentage of site;

2. Location and identification of all riparian corridors and wetlands within one hundred feet (100') of the site's property lines;

3. Location and boundaries of non-disturbance areas on the site that have been required by previous approvals.

4. Proposed location and boundaries of all required undisturbed fenced areas and buffers on the site and on adjacent lands within twenty-five feet (25') of the site's property lines;

5. Location and boundaries of all proposed site improvements on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements. This shall include the amount of proposed land disturbing activities, including amounts of developmental coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied);

6. Location of all proposed grading activities and all proposed drainage control facilities or systems on the site or on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;

7. Location of all proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, in the full width of abutting public rights-of-way, and any proposed extension required to connect to existing utilities, and proposed methods and locations for the proposed development to hook-up to these services; and

8. Such additional site plan information related to the proposed development as required by the Director to complete review of a project subject to the standards of this chapter.

C. Technical Reports. Technical reports and other studies and submittals shall be prepared as required by the Director detailing soils, geological, hydrological, drainage, plant ecology and botany, and other pertinent site information. The reports, studies and submittals shall be used to condition development to prevent potential harm and to protect the critical nature of the site, adjacent properties, and the drainage basin.

25.09.335 Posting, Covenants, and Recording Conditions.

A During construction, the Director may require conditions to be posted on the site that are visible from public rights-of-way.

B. The Director shall require a permanent covenant and a survey, if a survey has been prepared, be recorded in the King County Office of Records and Elections that describes and delineates all required non-disturbance areas, that prohibits

development on and any disturbance of them, and that prohibits considering them for development credit in future plats or development proposals.

C. 1. The Director shall require the boundaries of the following environmentally critical areas and/or their buffers and any permanent conditions imposed be legibly shown and described in a permanent covenant with the property, which shall be recorded in the King County Office of Records and Elections:

a. Fish and wildlife habitat conservation areas;

b. Wetland critical areas and their buffers; and

c. Steep slope areas and their buffers.

2. The covenant may be combined with the covenant required under subsection B, if that subsection applies. The covenant shall be recorded prior to the issuance of any permit or at the time a plat is recorded.

D. The Director may require placement of small permanent visible markers to delineate the areas described in subsections B and C. The location of the markers shall be legibly shown and described in the permanent covenant.

~~SMC 25.09.340 Administration:~~

~~A. The Director, in consultation with the Director of the Seattle Engineering Department, shall review and analyze a permit application to determine whether the proposed development meets the requirements and standards of this chapter. The Director may also consult with other City departments and regional public agencies as necessary to obtain additional technical and environmental review assistance. The Director shall review and approve all nonexempt public projects in public rights-of-way in environmentally critical areas and may institute interdepartmental charges to recover the cost of such review.~~

~~B. Permit applications shall only be approved after the Director is satisfied that the proposed development meets the requirements and development standards of this chapter, does not harm the general public health, safety and welfare, and prevents degradation and harm to the environment. If the general conditions and development standards or exemption and exception provisions contained in this chapter are not met, the Director shall deny the application.~~

~~SMC 25.09.345 Permit renewals in landslide-prone areas:~~

~~A. In addition to satisfying the provisions of SMC Chapter 23.76 and Section 106.9 of the Building Code, an applicant seeking to renew a building permit for new or additional development in a landslide-prone area, as described in SMC Section 25.09.020 B1a, must submit a Letter of Certification (LC) from the current project Engineer of Record stating that a geotechnical engineer has inspected the site and area surrounding the proposed development within the sixty (60) days preceding submittal of the letter; and that:~~

~~1. In the project engineer's professional opinion no significant changes in conditions at the site or surrounding area have occurred that render invalid or out-of-date the analysis and recommendations contained in the technical reports and other application materials previously submitted to DCLU as part of the application for the permit being renewed; or that~~

~~2. In the project engineer's professional opinion changes in conditions at the site or surrounding area have occurred that require revision to project criteria or the permit, and that in the project engineer's professional opinion all technical reports and any necessary revised drawings that account for the changed conditions have been submitted.~~

~~The Director may renew a permit for development in a landslide-prone area if, after considering the information submitted in conformance with subsections A1 or A2 above, he or she determines that there is no increased risk of damage to the proposed development, to neighboring properties, or to the drainage basin. In making such a determination the Director may impose new conditions or require the submittal of revised plans, but the Director may~~

~~renew a permit with different conditions or revised plans only if the project as revised is within the scope and intent of the original Master Use Permit.~~

~~B. In the event a Letter of Certification as described in subsection A above is not submitted, the permit shall not be renewed.~~

~~C. An applicant for renewal also must demonstrate that any required bond or insurance still is in effect, and that the amount of such bond or insurance still is appropriate. The Director may require a bond or insurance as a condition of renewal even if such bond or insurance was not required previously.~~

~~D. From April 16, 1997 until December 31, 1998, or until such earlier time as the City Council by resolution shall inform the Director that the Council has concluded its review of the City's expenditures for infrastructure on unstable land, each applicant for renewal of a Master Use Permit or a building permit, for new development or for development that will expand the footprint of existing development, on each property located in whole or in part in a known landslide-prone area as defined in SMC Section 25.09.020 B1a(1) or in an area that is both a steep slope as defined in SMC Section 25.09.020 B1a(2)(b) and that exhibits soil characteristics identified in SMC Section 25.09.020 B1a(2)(a), shall be required to sign an acknowledgment that he or she has read the following notice:~~

~~In view of the damage experienced in the landslides of 1996 and 1997, The City of Seattle has begun to review its policies on expenditures for infrastructure on unstable land. A range of options may be considered, including that (1) certain utility services provided by the City may not be provided under the same terms, conditions and rates that City utility services are provided in areas that are not landslide-prone, and that when the infrastructure for such utility services is paid for or built by applicants to serve their own properties, the City may not agree to repair, maintain, or own such infrastructure; and (2) any street, other than an arterial, that provides access to the proposed development and is damaged by landslides may not be repaired, rebuilt or repaved by the City, and if such street is repaired, rebuilt or repaved by the permit applicant, the City may not accept maintenance responsibility for such work. Any such changes in City policy will be adopted or approved by the City Council following a public process.~~

~~SMC 25.09.350 Processing applications in landslide-prone areas:~~

~~Prior to issuance of a permit, the Director may require an applicant to submit a Letter of Certification as authorized by Section 25.09.345 and to satisfy the standards of that section. The Director's decision to require such a letter shall be based on such factors as the presence of known slides, indications of changed conditions at the site or the surrounding area, or other indications of unstable soils.~~

~~SMC 25.09.352 Issued permits in landslide-prone areas:~~

~~If the Director has reasonable ground to believe that significant changes in conditions at a project site or in the surrounding area may have occurred since a building permit was issued, the Director may by letter or other reasonable means of notification suspend the permit until the applicant has submitted a Letter of Certification as authorized by Section 25.09.345 and satisfied the standards of that section for permit renewal.~~

~~SMC 25.09.355 Third-party review:~~

~~At the Director's discretion, permits for new or additional development in landslide-prone areas, as described in SMC Section 25.09.020 B1a, may be required to undergo third-party review as described in Section 25.09.080 C.~~

~~A. In addition to the criteria in Section 25.09.080 C, the Director's decision to require third-party review shall be based upon, but shall not be limited to, such factors as whether there has been incomplete submittal of data or apparently inadequate design work, whether the project is large scale, or whether the development site is complex.~~

~~B. The Director's discretion as exercised pursuant to this section shall supersede the staged review process as described in Section 25.09.080 B.~~

SMC 25.09.356 Acknowledgment of City policy.

~~From April 16, 1997 until December 31, 1998, or until such earlier time as the City Council by resolution shall inform the Director that the Council has concluded its review of the City's expenditures for infrastructure on unstable land, each applicant for a Master Use Permit or a building permit, for new development or for development that will expand the footprint of existing development, on each property located in whole or in part in a known landslide-prone area as defined in SMC Section 25.09.020 B1a(1) or in an area that is both a steep slope as defined in SMC Section 25.09.020 B1a(2)(b) and that exhibits soil characteristics identified in SMC Section 25.09.020 B1a(2)(a), shall be required to sign an acknowledgment that he or she has read the following notice:~~

~~In view of the damage experienced in the landslides of 1996 and 1997, The City of Seattle has begun to review its policies on expenditures for infrastructure on unstable land. A range of options may be considered, including that (1) certain utility services provided by the City may not be provided under the same terms, conditions and rates that City utility services are provided in areas that are not landslide-prone, and that when the infrastructure for such utility services is paid for or built by applicants to serve their own properties, the City may not agree to repair, maintain, or own such infrastructure; and (2) any street, other than an arterial, that provides access to the proposed development and is damaged by landslides may not be repaired, rebuilt or repaved by the City, and if such street is repaired, rebuilt or repaved by the permit applicant, the City may not accept maintenance responsibility for such work. Any such changes in City policy will be adopted or approved by the City Council following a public process.~~

25.09.360 State Environmental Policy Act.

~~This chapter establishes minimum standards which are to be applied to specific land use and platting actions in order to prevent further degradation of environmentally critical areas in the City, and is not intended to limit the application of the State Environmental Policy Act (SEPA). Projects subject to SEPA shall be reviewed and may also be conditioned or denied pursuant to Seattle Municipal Code Chapter 25.05.~~

25.09.380 Compliance with environmentally critical areas regulations.

~~Notwithstanding the provisions of Chapter 23.76 ,Seattle Municipal Code, authorizing issuance of Master Use Permits and Council Land Use Decisions upon compliance with the criteria and procedures of that chapter, no permit for a development proposal~~

~~or for actions described in Seattle Municipal Code Section 25.09.040015 shall be issued unless it also complies with the regulations of this chapter.~~

25.09.400 Violations and penalties.

~~A. It shall be a violation of this chapter for any person, firm or corporation to erect, construct, modify, improve, enlarge, repair, move, remove, convert or demolish, occupy or maintain any property, vegetation, building or structure contrary to or in violation of any provision of this chapter. It shall be a violation of the chapter for any person, firm or corporation to knowingly aid and abet, counsel, encourage, hire, commend, induce or otherwise procure another to violate or fail to comply with this chapter.~~

~~B. Civil Penalties.~~

~~1. Any person, firm or corporation who fails to comply with any provision of this chapter or any notice, decision or order issued by the Director pursuant to this chapter shall be subject to a cumulative civil penalty in the amount of Five Hundred Dollars (\$500) per day for each day of noncompliance, measured from the date the violation begins or occurs until the owner, person, firm or corporation complies with the requirements of this chapter. The Director shall notify the City Attorney in writing of the name of any person subject to the penalty, and shall assist the City Attorney in collecting the penalty.~~

~~2. Violations causing significant damage as defined by the following acts shall be assessed penalties at an amount~~

~~reasonably determined by the Director to be equivalent to the economic benefit that the violator derives from the violation as measured by the greater of the resulting increase in market value of the property or the value received by the violator, or savings of construction costs realized by the violator:~~

~~a. Grading (filling and/or excavation), clearing of vegetation and trees, and draining of riparian corridors, wetlands and their buffers; or~~

~~b. Destruction of trees, including tree-topping detrimental to trees, over twelve (12) inches caliper; or~~

~~c. Any six (6) foot vertical cut or fill within a potential landslide area.~~

~~C. Stop-work Order. Whenever a continuing violation of this chapter will materially impair the Director's ability to secure compliance with this chapter, when the continuing violation threatens the health or safety of the public, or when the continuing violation threatens or harms the environment, the Director may issue a stop-work order specifying the violation and prohibiting any work or other activity at the site. The posting of the stop-work order on the site shall be deemed adequate notice of the stop-work order. A failure to comply with a stop-work order shall constitute a violation of this chapter.~~

~~D. Emergency Order. Whenever any use or activity in violation of this chapter threatens the health and safety of the occupants of the premises or property or any member of the public, the Director may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety or threat and harm to the environment be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this chapter. Any condition described in the emergency order which is not corrected within the time specified is hereby declared to be a public nuisance and the Director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.~~

~~E. Criminal Penalty:~~

~~1. Anyone violating or failing to comply with any order issued by the Director pursuant to this chapter shall, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than three hundred sixty (360) days, or by both such fine and imprisonment. Each day's violation or failure to comply shall constitute a separate offense.~~

~~2. Anyone violating or failing to comply with any of the provisions of this chapter and who within the past five (5) years has had a judgement against them pursuant to subsection B shall upon conviction thereof, be fined in a sum not to exceed Five Hundred Dollars (\$500.00) or by imprisonment for not more than one hundred and eighty (180) days, or by both such fine and imprisonment. Each day's violation or failure to comply shall constitute a separate offense.~~

A. It is a violation of this chapter to fail to comply with any provision of this chapter or with any term of any permit condition or approval issued pursuant to this chapter.

B. It is a violation of this chapter to fail to comply with any order issued pursuant to this chapter or to remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter.

C. It is a violation of this chapter to misrepresent any material fact in any application, on plans, or in any other information submitted to obtain any determination, authorization, permit condition, or approval under this chapter.

D. It is a violation of this chapter to aid and abet, counsel, encourage, hire, command, induce or otherwise procure another to violate or fail to comply with this chapter.

25.09.410 Authority to Enforce.

A. The Director is authorized to enforce this chapter and may call upon other appropriate City departments to assist in enforcement.

B. The Director may, with the consent of the owner or occupier of any land, premises, building, or structure, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any land, watercourse, premises, building, or structure subject to the consent or warrant.

C. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier, or other person responsible for the condition of the vegetation, land, watercourse, premises, building, or structure within the scope of this chapter.

D. No provision of or term used in this chapter is intended to impose any duty upon the City or any of its officers or employees that would subject them to damages in a civil action.

25.09.420 Investigation and Notice of Violation.

A. The Director is authorized to investigate the condition of any vegetation, land, watercourse, premises, building, structure, activity, or use that the Director reasonably believes does not comply with the provisions of this chapter. The Director's investigation and determination that a violation exists is not limited by determinations made by determinations made by other City agencies.

B. If after investigation the Director determines that any provision of this chapter has been violated, the Director may serve a notice of violation upon any person that the Director believes is responsible for the violation. The notice of violation may identify the violation by code section; and may state what corrective action (including restoration), if any, is necessary to comply with the provisions of this chapter, set a reasonable time for compliance; and state the penalty for violating this chapter. The Director may require that the restoration plan be prepared by a qualified professional, at the violator's expense. Wetland mitigation shall be consistent with Section 25.09.160.

C. Any notice issued pursuant to subsection B shall be served upon the owner, occupier or other person responsible for the violation by personal service in the manner set forth in RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known address of such person(s). Service is complete at the time of personal service, or if mailed, three (3) days following the date of mailing. If a notice of violation sent by first class mail is returned as undeliverable, then service of the notice upon such person or persons may be made by posting the notice at a conspicuous place on the property where the violation occurred.

D. If a notice of violation or order is recorded with the King County Department of Records and Elections, a notice of violation or order for the same violation need not be served upon a new owner. If a new notice of violation or order is not issued and served upon a new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner, starting on the date that the conveyance is completed.

E. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to Sections 25.09.430 and 25.09.450 of this chapter, and nothing in this section requires the Director to issue a notice of violation prior to the imposition of civil or criminal penalties.

25.09.430 Stop-Work Order.

A. The Director may issue a stop-work order whenever any use, activity, work or development (1) is being done without a permit, determination, or authorization required by this chapter, (2) is being done contrary to any determination, authorization, permit, or approval of DPD and the use, activity, work or development will immediately impact an environmentally critical area or materially impair the Director's ability to secure compliance with this chapter, or (3) immediately threatens the public health, safety, and welfare with respect to the interests protected under this section.

B. The stop-work order shall describe the violation in writing and be posted on the premises or served on any person

responsible for the violation. Except emergency work necessary to stabilize the site that may be required by the Director, it is unlawful for any work on the property to be done after the posting or service of a stop-work order until authorization to proceed is given by the Director.

C. The stop-work order may require that vegetation, land, watercourse, premises, building, structure, or portion thereof, be vacated within a reasonable time, depending on the degree of danger, specified in the order. No person shall occupy the vegetation, land, premises, building, structure, or portion thereof after the date on which it is required to be vacated until the vegetation, land, watercourse, premises, building, structure, or portion thereof, is restored to a safe condition as determined by the Director.

25.09.450 Review by the Director.

A. Any person significantly affected by a notice of violation or stop-work order issued by the Director pursuant to this chapter may obtain an administrative review of the notice or order by requesting such review in writing to the Director within ten (10) days of the date of the notice or order. When the last day of the period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day. A request for administrative review is an administrative remedy that must be exhausted before judicial review of the notice or order may be sought.

B. Upon receipt of the request, the Director shall notify by mail any persons served within the notice or order and any person requesting review, advising them of the request for review, of the date of the review, and of the deadline for submitting additional written information for consideration. The deadline for submitting additional written information shall be ten (10) days from the date the notice of administrative review is mailed, unless otherwise agreed to by all persons served with the notice or order. The Director and all persons served with the notice or order may also agree to review the matter within a shorter period or time that shall not be less than three (3) days from the date the notice or order was issued.

C. The Director shall conduct the administrative review and issue a decision on the request for administrative review in the form of an Order of the Director. The Director shall review all written information received by the submission deadline and any additional evidence or information available to DPD staff and placed in the case file. The Director may also request clarification of information received and a site visit. After review of the case file and of the additional written information and/or after a site visit, the Director shall issue an Order of Director that may:

1. Sustain the notice or order;
2. Withdraw the notice or order;
3. Continue the review to a date certain for receipt of additional information; or
4. Modify the notice or order, which may include an extension of the compliance date, if any.

D. The Director shall issue the Order of the Director no later than ten (10) days from the deadline for submitting additional information. The Order of the Director is mailed by first class mail to the person or persons named on the notice of violation or order and to any person who requested the administrative review. If the original notice or order was recorded with the King County Department of Records and Elections the Order of the Director shall also be recorded.

25.09.460 Civil Penalty.

A. Any person who violates or fails to comply with any provision of this chapter is subject to a civil penalty in an amount not to exceed Five Hundred Dollars (\$500) per day for each violation, and in the event of a continuing violation shall be subject to a cumulative civil penalty of \$500 per day for each violation from the time the violation occurs or begins until compliance is achieved. In cases where the Director has issued a notice of violation with a compliance date, the violation is deemed to begin, for purposes of determining the number of days of violation, on the date

compliance is required by the notice of violation. For removing, clearing, or taking any action detrimental to a tree over six inches in caliper an additional civil penalty of Five Thousand Dollars (\$5,000) shall be assessed.

B. Violations causing significant damage may be assessed an additional penalty in an amount reasonably determined to be equivalent to the economic benefit that the violator derived from the violation, measured as the greater of, the resulting increase in market value of the property, the value received by the violator, or the savings of construction costs realized.

C. The penalty imposed by this section may be collected by civil action brought in the name of the City. The Director notifies the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney, with the assistance of the Director, takes appropriate action to collect the penalty. In any civil action for a penalty, the City has the burden of proving by a preponderance of the evidence that a violation exists or existed; the issuance of a notice of violation or of an Order following an administrative review by the Director is not itself evidence that a violation exists.

25.09.470 Alternative Criminal Penalty.

Any person who violates or fails to comply with this chapter shall be guilty of a gross misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 need be proved. The Director may request the City Attorney prosecute such violations criminally as an alternative to the civil penalty provision outlined in this chapter. Each day that a person continues to violate or fail to comply with the provisions of this chapter and each occurrence of a prohibited activity constitutes a separate offense.

25.09.480 Additional Relief.

The Director may seek legal or equitable relief to enjoin any acts or practices and abate any condition that constitutes or will constitute a violation of this chapter.

25.09.420 Definitions.

"Best management practices" ~~are~~ means

a. the practices defined in SMC Section 22.801.030, Stormwater, Grading and Drainage Control Code; and

b. structural, nonstructural and managerial techniques identified by the Director, or by the director of a City agency when that agency is making determinations under this chapter, as the most effective and practical means in an urban environment to mitigate adverse environmental effects on environmentally critical areas and buffers and their functions.

"Biologist" means a person who has earned a degree in biological sciences from an accredited college or university, or a professional who has equivalent educational training and has experience as a practicing biologist.

"Buffer" means a designated area adjacent to and/or a part of an environmentally critical area and intended to protect the environmentally critical area.

"City agency" means The City of Seattle or any of its subdivisions, including but not limited to, any City board, commission, committee, officer or department.

"Construction activity area" ~~refers to~~ means all areas of land disturbing activity within a site or on adjacent sites or rights-of-way used during construction including, but not limited to, developmental coverage areas and construction access and storage areas.

"Detention" is defined in ~~SMC~~ Section 22.801.050, Stormwater, Grading and Drainage Control Code.

"Development" ~~means and refers to~~ all components and activities related to construction; ~~or disturbance and/or use of a~~

site, including but not limited to land disturbing activities.

"Development standard" means a regulation establishing a limit on development.

~~"Developmental coverage" is defined in SMC Section 22.801.050, Stormwater, Grading and Drainage Control Code.~~

"Director" means the Director of the Department of ~~Construction and Land Use~~ Planning and Development or his or her designee.

~~"Discharge point" is defined in SMC Section 22.801.050, Stormwater, Grading and Drainage Control Code.~~

"Downtown zones" means all Downtown Office Core, Downtown Retail Core, Downtown Mixed Commercial, Downtown Mixed Residential, Downtown Harbor Front, International District Mixed, International District Residential, Pike Market Mixed, and Pioneer Square Mixed, as defined in Chapter 23.30.

~~"Drainage control" is defined in SMC Section 22.801.050, Stormwater, Grading and Drainage Control Code.~~

"Drainage-control facility" is defined in ~~SMC~~ Section 22.801.050, Stormwater, Grading and Drainage Control Code.

~~"Drainage-control plan" is defined in SMC Section 22.801.050, Stormwater, Grading and Drainage Control Code.~~

"Drainage-control system" is defined in ~~SMC~~ Section 22.801.050, Stormwater, Grading and Drainage Control Code.

~~"Drainage water" is defined in SMC Section 22.801.050, Stormwater, Grading and Drainage Control Code.~~

"Ecological Function" means the work performed or role played individually or collectively by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the natural environment.

"Exception" refers to the environmentally critical areas exception, Section 25.09.300.

"Exemption" means to release a project either fully or partially from compliance with the environmentally critical areas regulations, or from specific development standards of this chapter, as provided in Section 25.09.045.

"Geologist" means a person who has earned a degree in geology from an accredited college or university and has at least five (5) years' experience as a practicing geologist or four (4) years of experience and at least two (2) years of postgraduate study, research or teaching. The practical experience shall include at least three (3) years of work in applied geology and evaluation, in close association with qualified practicing geologists or geotechnical/civil engineers.

"Geotechnical/civil engineer" means a practicing geotechnical/civil engineer licensed as a professional civil engineer by the State of Washington who has at least four (4) years of professional experience as a geotechnical engineer including experience with landslide evaluation.

~~"Hydrologist" means a person who has earned a degree in hydrological sciences from an accredited college or university, or a professional who has equivalent educational training and has experience as a practicing hydrologist.~~

"Impervious surface" is defined in ~~SMC~~ Section 22.801.100, Stormwater, Grading and Drainage Control Code.

"Improved public road right-of-way" means a right-of-way which either contains utilities or is paved.

"Invasive plants" means the plants listed for Western Washington in Washington State Department of Ecology Publication # 04-06-025.

~~"Land disturbing activity" is defined in SMC Section 22.801.130, Stormwater, Grading and Drainage Control Code.~~

means any activity that results in a movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Land disturbing activities include, but are not limited to, clearing, grubbing, grading, filling, excavation, or addition or replacement of impervious surface.

"Lot" means a platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley.

"Native fish" means a species of fish identified by the United States Fish and Wildlife Service as occurring in the Puget Sound area as part of its indigenous fresh water or marine aquatic fauna.

"Native vegetation" means vegetation, including trees, comprised of plant species ~~which that~~ are indigenous and noninvasive, naturalized to the Puget Sound region and ~~which that~~ reasonably can be expected to naturally occur on a site. Native vegetation does not include noxious weeds.

"Non-disturbance areas" means areas where development is not to be allowed.

"Normal pruning and maintenance" means for trees, shrubs and other woody plants compliance with American National Standards Institute A300 pruning standards.

"Noxious weeds" means weeds listed by the King County Noxious Weed Control Board.

"Ordinary high water mark" means, on all lakes, streams, and tidal water, that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter or as it may change thereafter in accordance with permits issued by the Director of the Department of Ecology; provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

"Parcel means a lot, unplatted property or combination thereof in the City of Seattle.

"Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited

liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, the United States or any instrumentality thereof, and any entity of whatever type.

"Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the Director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

"Provisions of this chapter" means all sections of this chapter.

"Retaining structure" means any improvement built up or composed of parts joined together in some definite manner and affixed to the ground for the purposes of retaining earth or rocks, including but not limited to concrete retaining walls, mechanically stabilized earth systems, soil nails, terracing, or flower bed frames.

"Riparian watercourse" means a channel through which water flows as defined in subsection 25.09.020 D5.

"Shoreline habitat" means Type 1 waters defined in WAC 222-16-031 that provide migration corridors for fish listed by WDFW as a priority species waterward of the ordinary high water mark.

"Short subdivision" means the division or redivision of land into nine (9) or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, development or financing, and shall include all resubdivision of previously platted land and properties divided for the purpose of sale or lease of townhouse units.

"Site" means the unit of land for which an applicant is receiving permission to carry out development.

~~"Species of local importance" means those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species. of wildlife designated under Section 25.09.200E.~~

"Stabilize" means to possess permanent characteristics, either naturally or by manmade improvements, which can be shown to have sufficient resistance to forces normally expected to occur, and those forces ~~which~~ that may occur as a result of a one (1) in one-hundred (100) year event.

"Steep slopes" means slopes of forty percent (40%) inclination or more within a vertical elevation change of at least ten feet (10'). For the purpose of this definition, a slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten feet (10') of elevation difference. Also for the purpose of this definition:

(a) The "toe" of a slope means a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "toe" of a slope is the lower most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25'); and

(b) The "top" of a slope is a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "top" of a slope is the upper most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five (25) feet.

"Steep slope area" means an area described in subsection 25.09.020 A 3.

"Street" means a right-of-way which is intended to provide or which provides a roadway for general vehicular circulation, is the principal means of vehicular access to abutting properties and includes space for utilities, pedestrian walkways, sidewalks and drainage.

"Subdivision" means the division or redivision of land into ten (10) or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease and transfer of ownership.

~~"Urban natural open space habitat" means and refers to those fish and wildlife habitat areas mapped by the Washington State Department of Wildlife.~~

"Vegetation" means any and all organic plant life growing on, below, or above the soil surface.

"Watercourse" is defined in Section 22.801.240.

"Wetland Creation" means the creation of a wetland within an upland area.

~~"Wetland of exceptional value" means and refers to wetlands with the following values:~~

~~1. Rare or unique species listed by the federal or State government as endangered or threatened and needing special~~

~~protection;~~

2. ~~Presence of plants or group of plants that occur infrequently in the Seattle or Puget Sound region;~~

3. ~~Habitat diversity;~~

4. ~~Sensitivity to disturbance; and~~

5. ~~Difficulty in replacement of ecological functions unique to Seattle.~~

~~"Degraded wetland" means and refers to those wetlands which have been altered or damaged by past human activities and/or biologically diminished by invasive, non-native plants so that the natural biofiltration and habitat values have been rendered inefficient or nonfunctional.~~

"Wetland Restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland.

~~"Wildlife" means and includes all undomesticated animals~~ all species of the animal kingdom as defined in RCW 77.08.010.

"Wildlife habitat" means and refers to those areas that support individual or populations of animals defined as wildlife for all or part of an annual cycle.

25.09.440530 Construction.

In any case where the provisions of this chapter conflict with the provisions of the underlying zoning or the Seattle Shoreline Master Program, the provisions of this chapter ~~shall~~ apply. For purposes of this chapter, the singular ~~shall~~ includes the plural and vice versa, and the masculine gender ~~shall~~ include s the feminine and neutral genders.

Section 2. Section 23.28.030 of the Seattle Municipal Code is amended as follows:

SMC 23.28.030 Criteria for approval.

A. The Director shall approve an application for a lot boundary adjustment if it is determined that:

1. No additional lot, tract, parcel, site or division will be created by the proposed adjustment;

2. No lot is created which contains insufficient area and dimensions to meet the minimum requirements for development as calculated under the development standards of the zone in which the lots affected are situated, except as provided in Section 23.44.010, and under any applicable regulations for siting development on parcels with riparian corridors, shoreline habitat, shoreline habitat buffers, wetlands, wetland buffers or steep slopes in chapter 25.09. Any required nondisturbance area shall be legibly shown and described on the site plan, and a covenant shall be required as set out in Section 25.09.335;

3. No lot is created which does not have adequate drainage, water supply and sanitary sewage disposal, and access for vehicles, utilities and fire protection;

4. The lot boundary adjustment is consistent with applicable provisions of the Land Use Code, Title 23, ~~and SMC Chapter 25.09, Regulations for Environmentally Critical Areas.~~

B. An application for a lot boundary adjustment on a parcel containing and environmentally critical area or buffer shall include the information described in Section 25.09.330, unless the Director determines that some of the information listed is not necessary for reviewing the application.

Section 3. Section 23.22.058 of the Seattle Municipal Code is amended as follows:

23.22.058 Environmentally critical areas.

No plat shall be approved by the Hearing Examiner covering any land situated in a riparian corridor ~~buffer~~, wetland and wetland buffer, or steep slope and steep slope buffer unless in compliance with the applicable provisions of ~~SMC~~ Section 25.09.240, Short subdivisions and subdivisions, in environmentally critical areas.

Section 4. Subsection 23.44.008 G of the Seattle Municipal Code is amended as follows:

23.44.008 Development standards for uses permitted outright.

* * * *

G. Development standards governing lots ~~located in~~ containing an environmentally critical area or buffer may be modified according to the provisions of ~~SMC Chapter 25.09, Regulations for Environmentally Critical Areas.~~

Section 5. Subsection 23.44.010 B5 of the Seattle Municipal Code is amended as follows:

23.44.10 Lot requirements.

* * * *

B. Exceptions to Minimum Lot Area. The following exceptions to minimum lot area are subject to the limits of subsection B5. A lot which does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped as a separate building site according to the following:

* * * *

5. Development may occur on a substandard lot containing a riparian corridor ~~buffer~~, a shoreline habitat and shoreline habitat buffer, a wetland and wetland buffer, or a steep slope and steep slope buffer pursuant to the provisions of ~~SMC~~ Chapter 25.09, Regulations for Environmentally Critical Areas, if the following conditions apply:

- a. The substandard lot is not held in common ownership with an adjacent lot or lots at any time after the effective date of ~~SMC Chapter 25.09, Regulations for Environmentally Critical Areas~~, or
- b. The substandard lot is held in common ownership with an adjacent lot or lots, or has been held in common ownership at any time after the effective date of ~~SMC Chapter 25.09, Regulations for Environmentally Critical Areas~~,² but proposed and future development will not intrude upon the environmentally critical area or buffer;

* * * *

Section 6. Subsection 23.44.014 D15 of the Seattle Municipal Code is amended as follows:

23.44.014 Yards.

* * * *

D. Exceptions from Standard Yard Requirements. No structure shall be placed in a required yard except pursuant to the following subsections:

* * * *

15. Front and rear yards ~~may be reduced by twenty-five (25) percent, but no more than five (5) feet, if the site contains a~~

~~required on lots containing certain environmentally critical area or buffer or other area of the property which can not be disturbed may be reduced pursuant to subsection A of Sections 25.09.280 and 25.09.300 of SMC Chapter 25.09, Regulations for Environmentally Critical Areas.~~

* * * *

Section 7. Subsections A and C of Section 23.44.024 of the Seattle Municipal Code is amended as follows:

SMC 23.44.024 Clustered housing planned developments.

* * * *

A. Site Requirements.

1. The minimum size of a CHPD shall be two (2) acres. Land which is designated environmentally critical due to the presence of a riparian corridor, wetland, wetland buffer, steep slope, or steep slope buffer according to ~~SMC Chapter 25.09, Regulations for Environmentally Critical Areas~~, and submerged land shall not be used to meet minimum size requirements.
2. Where portions of a site are designated environmentally critical due to the presence of a riparian corridor, wetland, wetland buffer, steep slope, or steep slope buffer according to ~~SMC Chapter 25.09, Regulations for Environmentally Critical Areas~~, the conditional use clustered development provisions under Section 25.09.260 shall apply, superseding the standards of this section.
3. The Director may exclude land from a CHPD if it is separated from the site by topographical conditions, if it has a poor functional relationship with the site, or if inclusion of the land would negatively impact adjacent single-family zoned lots.

* * * *

C. Number of Dwelling Units Permitted.

1. The number of dwelling units permitted in a CHPD shall be calculated by dividing the CHPD land area by the minimum lot size permitted by subsection A of Section 23.44.010 in the single-family zone in which the CHPD is located. Land which is designated environmentally critical due to the presence of a riparian corridor, wetland, wetland buffer, steep slope, or steep slope buffer and submerged land shall be excluded from the land used to calculate density in a CHPD. For CHPDs which include more than one (1) zone, the number of dwelling units shall be calculated based on the proportion of land area in each zone.
2. Where portions of a site are designated environmentally critical due to the presence of a riparian corridor, wetland, wetland buffer, steep slope, or steep slope buffer according to ~~SMC Chapter 25.09, Regulations for Environmentally Critical Areas~~, the conditional use provisions for regaining development credit and clustering under Section 25.09.260 shall apply.
3. One (1) additional detached single-family structure may be permitted if the development includes recreational, meeting and/or day care facilities open to the surrounding community.

* * * *

Section 8. Subsection 23.45.014 H of the Seattle Municipal Code is amended as follows:

23.45.014 Setback requirements -- Lowrise zones.

* * * *

~~H. Front and rear setbacks may be reduced by twenty-five (25) percent, but no more than five (5) feet, if the site contains a required on lots containing certain environmentally critical areas or buffers may be reduced or other area of the property which can not be disturbed pursuant to the provisions of subsection A of Sections 25.09.280 and 25.09.300 of SMC Chapter 25.09, Regulations~~

~~for Environmentally Critical Areas.~~

Section 9. Subsection 23.45.056 D3 of the Seattle Municipal Code is amended as follows:

23.45.056 Midrise -- Setback requirements.

* * * *

D. General Setback Exceptions.

* * * *

~~3. Front and rear setbacks may be reduced by twenty-five (25) percent, but no more than five (5) feet, if the site contains a required on lots containing certain environmentally critical areas or buffers may be reduced or other area of the property which can not be disturbed pursuant to the provisions of subsection A of Sections 25.09.280 and 25.09.300 of SMC Chapter 25.09, Regulations for Environmentally Critical Areas.~~

Section 10. Subsection 23.45.072 D3 of the Seattle Municipal Code is amended as follows:

SMC 23.45.072 Highrise -- Setback requirements.

* * * *

D. General Setback Exceptions.

* * * *

~~3. Front and rear setbacks on lots containing certain may be reduced by twenty-five (25) percent, but no more than five (5) feet, if the site contains a required environmentally critical areas or buffers may be reduced or other area of the property which can not be disturbed pursuant to the provisions of subsection A of Sections 25.09.280 and 25.09.300 of SMC Chapter 25.09, Regulations for Environmentally Critical Areas.~~

Section 11. Subsection 23.53.010 B3 of the Seattle Municipal Code is amended to read:

SMC 23.53.010 Improvement requirements for new streets in all zones

* * * *

B. Required Right-of-way Widths for New Streets.

* * * *

3. Exceptions to Required Right-of-way Widths. The Director, after consulting with the Director of Transportation, may reduce the required right-of-way width for a new street when location in an environmentally critical area or buffer, disruption of existing drainage patterns, or removal of natural features such as significant trees makes the required right-of-way width impractical or undesirable.

Section 12. Subsection 23.53.015 D3a of the Seattle Municipal Code is amended to read:

SMC 23.53.015 Improvement requirements for existing streets in residential and commercial zones.

* * * *

D. Exceptions.

* * * *

3. Exceptions from Required Street Improvements. The Director may waive or modify the requirements for paving and drainage, dedication, setbacks, grading, no-protest agreements, landscaping and curb and sidewalk installation when it is determined that one (1) or more of the following conditions are met:

a. Location in an environmentally critical area or buffer, disruption of existing drainage patterns, or removal of natural features such as significant trees makes widening and/or improving the right-of-way impractical or undesirable.

* * * *

Section 13. Subsection 23.53.020 E3a of the Seattle Municipal Code is amended to read:

SMC 23.53.020 Improvement requirements for existing streets in industrial zones.

* * * *

E. Exceptions.

* * * *

3. Exceptions From Required Street Improvement Requirements. The Director may waive or modify the requirements for paving, dedication, setbacks, grading, no-protest agreements, landscaping and sidewalk and pedestrian walkway installation when it is determined that one (1) or more of the following conditions are met:

a. Location in an environmentally critical area or buffer, disruption of existing drainage patterns, or removal of natural features such as significant trees makes widening and/or improving the right-of-way impractical or undesirable.

* * * *

Section 14. Subsection 23.53.025 H of the Seattle Municipal Code is amended to read:

SMC 23.53.025 Access easement standards.

* * * *

H. Exceptions From Access Easement Standards. The Director, in consultation with the Fire Chief, may modify the requirements for easement width and surfacing for properties located in environmentally critical areas or their buffers when it is determined that:

1. Such modification(s) would reduce adverse effects to identified environmentally critical areas or buffers; and
2. Adequate access and provisions for fire protection can be provided for structures served by the easement.

Section 15. Subsection 23.53.030 G1 of the Seattle Municipal Code is amended to read:

SMC 23.53.030 Alley improvements in all zones.

* * * *

G. Exceptions. The Director, after consulting with the Director of the Department of Transportation, may modify or waive the requirements for dedication, paving and drainage, setbacks, grading and no-protest agreements, if it is determined that one (1) or more of the following conditions are met. The Director may require access to be from a street if alley improvements are also waived.

1. Location in an environmentally critical area or buffer, disruption of existing drainage patterns, or removal of natural features such as significant trees makes widening and/or improving the right-of-way impractical or undesirable;

* * * *

Section 16. Section 23.84.010 of the Seattle Municipal Code is amended to read:

23.84.010 "E"

* * * *

"Environmentally critical area" means those areas ~~designated by~~ defined in the City of Seattle Environmentally Critical Areas Policies and regulated and mapped in SMC Chapter 25.09, Regulations for Environmentally Critical Areas, ~~and other city codes.~~

* * * *

Section 17. Subsection C of SMC Section 23.90.002 of the Seattle Municipal Code is amended as follows:

23.90.002 Violations

* * * * *

C. It is a violation of Title 23 to remove or deface any sign, notice, complaint or order required by or posted in accordance with Title 23 ~~or Title 25.~~

* * * *

Section 18. This ordinance shall take effect and be in force on the later of (a) May 9, 2006, or (b) thirty (30) days from and after its approval by the Mayor, or (c) if not approved and returned by the Mayor within ten (10) days after presentation, on the effective date as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 20____, and signed by me in open session in authentication of its passage this ____ day of _____, 20____. _____ President _____ of the City Council

Approved by me this ____ day of _____, 20____. _____ Gregory J. Nickels,
Mayor

Filed by me this ____ day of _____, 20____. _____ City Clerk

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