



**MEMORANDUM**  
*Department of Community and Economic Development*  
*Planning Division*

TO: SeaTac Planning Commission  
FROM: Mike Scarey, Senior Planner  
REGARDING: Revised Follow up to the May 3 Public Hearing  
DATE: May 17, 2016

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This memo provides a brief recap of the process to amend some sections of SMC 15.700, Environmentally Sensitive Areas; a summary of comments offered at the May 3 Public Hearing, including staff responses; and some suggestions from staff for further amending the draft regulations to address some of those comments, that the Commission may wish to consider.

**1. Recap of the Amendment Process**

The Planning Commission reviewed proposed amendments over the course of 7 meetings beginning in January of this year. At these meetings staff summarized communication from the Department of Ecology (DOE) identifying some of the City's environmental regulations that were out of date and did not conform to current standards. The meetings also included drafts of the amended sections for Commission review and discussion, while staff responded to questions and requests for clarification. A complete draft of Chapter 15.700 SMC including all proposed amendments in context was presented at the April 19 meeting, which preceded the May 3 Public Hearing.

The draft amendments were submitted to the state for 60-day review on March 4, 2016. No comments were received.

The SEPA determination was published on April 19, and was closed on May 13 with the expiration of the appeal deadline. No appeals were filed.

**2. Summary of Public Hearing Comments**

***Comments From The Public***

***Cathy Boysen-Heiberg***

**Comment:**

What will be the impact of [wetland regulations] on existing developed properties?

**Response:**

If no new development or redevelopment is proposed, the new regulations would not be triggered.

The proposed wetland buffer regulations provide for a 25% reduction in the required width if the buffer area has been compromised by development; this is not part of the current regulations

In some cases the proposed wetland buffers are less than what is required currently; in most cases the proposed buffers are wider.

Buffer requirements for other critical areas (e.g., streams, steep slopes, etc.) remain unchanged.

For Further Consideration

Adding the following language to Section 15.700.010 as an additional subsection would clarify when the provisions in this chapter apply:

When a redevelopment proposal meets the threshold of “Major Redevelopment” (SMC 15.105), only the portions of the site being altered shall be required to integrate the buffer requirements of this chapter into the design of the proposal.

***Earl Gipson***

Comment:

If a property owner is required to pay for a study to determine if a wetland is present and the study determines that there is none, the city should reimburse the property owner for the cost of the study.

Response:

Commissioner Dantzer suggested that Mr. Gipson draft language to that effect for the Commission’s consideration.

There is no precedent for codifying this type of reimbursement. Residents may always submit a claim for reimbursement to the City.

***Daryl Tapio:***

Comment 1:

“Altering” property within a buffer is defined as “any human induced change.” This puts the area inside a buffer essentially off limits to the owner. Property owners could be found in violation of city regulations for doing what they would consider reasonable use of their property.

Response:

Wetland buffers are already regulated under the existing code. Existing code Section 15.700.290, Wetlands – Permitted Alterations allows some uses in wetlands and buffers.

For Further Consideration

Adding the following language to Section 15.700.290 as additional subsections would provide some additional flexibility for property owners:

- D. Pursuant to an approved Critical Area Report, maintenance to remove hazards (e.g., flooding of areas outside the buffer) or to remove invasive plant species may be allowed. The use of herbicides may be allowed only if used employing best management practices.
- E. The harvesting of wild crops (e.g., native berries) in a manner that is not injurious to natural reproduction of such crops and provided the harvesting

does not require tilling of soil, planting of crops, or changing existing topography, water conditions or water sources.

Amending Subsection 15.700.285(K) as follows is needed to accommodate the above provisions:

**D, K Hazardous Substances Prohibited.** The use of hazardous substances, pesticides, herbicides and fertilizers in the a wetland and or its buffer may be are prohibited by the City, except as provided in 15.700.290(D) [highlighted sections are added post hearing]

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Comment 2:

Other definitions need scrutiny, e.g., “creation,” “enhancement.”

Response:

“Creation” refers to creating a wetland where one did not already exist. It applies specifically to wetlands created as part of a Compensatory Mitigation process, a new section included in this series of amendments. Since the term is used in these regulations it makes sense to include a definition related to this context.

“Enhancement” is also a term used in the Compensatory Mitigation section and is included as a definition for the same reason. The definition is specific to improving certain wetland functions.

Comment 3:

Defining and delineating critical areas (e.g., wetlands, streams, steep slopes, critical aquifer recharge areas, wildlife habitat areas) and buffers can be expensive, ambiguous and subject to debate, even among experts.

Response:

Although the identification process can be expensive and some aspects are subject to debate, to protect critical areas, they still have to be identified and delineated.

It is important to note that natural systems are dynamic and continue to evolve over time: e.g., changes in rainfall patterns or groundwater levels can result in changes to the size or shape of a wetland.

Comment 4:

Mapping of critical aquifer recharge areas should be verified using scientific data.

Response:

The wellhead protection areas (WHP) were delineated by Seattle Public Utilities and Highline Water District (Highline) using methods acceptable to the Department of Health. Highline’s WHP appear as concentric circles because the “calculated fixed radius” method is allowed based on their wells being rated as having a low risk of contamination. More information is available in the Highline Water District Water System Plan, Appendix M-Wellhead Protection Program.

Designating the whole of the city outside the WHP as a Category 2 Critical Aquifer Recharge Area (CARA) is based on review of the document Occurrence and Quality of Ground Water in Southwestern King County, Washington, by D. G. Woodward, F. A. Packard, N. P. Dion, and S. S. Sumioka, US Geological Survey, Water-Resources

Investigations Report 92-4098, 1995. This study identifies layers of glacial till among the subsurface strata, consistent with the low risk status of Highline's wells noted above. But "low risk" does not mean "no risk." Layers of glacial till are not impervious, nor are they uniform; surface water does penetrate these layers, so they must be protected from spills of hazardous materials at the surface (email correspondence from Laurie Morgan, Dept. of Ecology 4/22/16).

The regulations proposed to minimize hazardous spills in Category 2 CARA are hardly onerous:

- Most of the prohibited uses (15.700.360(C)) are not allowed uses currently. Where such a use is allowed (e.g., dry cleaner) this section clarifies that the prohibition applies to the use of a toxic material;
- For common business uses, performance standards are used to control the use of hazardous substances (e.g., auto repair must take place over an impervious surface not exposed to weather);
- For the most part, the use and storage of hazardous substances is regulated by existing federal and state laws.

**For Further Consideration (Suggested by Seattle Public Utilities)**

Including a reference to the State's antidegradation policy (WAC 173-200-030) to the table of state and federal regulations would identify an additional existing law applicable to groundwater protection.

Including the water districts operating wells in SeaTac (Seattle Public Utilities and Highline Water District) as parties to review Critical Area Reports required under 15.700.360(E)(3) would avail the city of their expertise in our efforts to protect wellhead areas. Suggested language as follows:

- g. The department shall forward a copy of the Critical Area Report to the appropriate Water District for review.

Amending Section 15.700.360(C)(2) to add language ensuring the maintenance of allowed types of injection wells would further protect groundwater from contaminants. Suggested language as follows:

2. **Underground Injection Wells.** All underground injection wells as defined in Chapter 173-218 WAC with the exception of those listed in subsections a. through i. below [are prohibited], except the following: All underground injection wells shall comply with the requirements of WAC 173-218 and shall be maintained to employ all known, available and reasonable methods of controlling or abating pollutants associated with a discharge.

***Comment from Kathryn Campbell:***

Comment:

Does the proposal strictly adhere to State guidelines?

Response:

See response to Mayor Siefkes Comment 1, below.

***Comments from Mayor Siefkes:***

**Comment 1:**

Are all of the changes required, and how much modification can be made to State guidelines?

**Response:**

The changes are all required. Most areas of the draft amendments come from communication the city received from the Dept. of Ecology (email from Donna Buntin, May 7, 2015). That email cites the following as sections SeaTac's code needing to be updated:

- Definition of "wetland" should be updated to that required by RCW 36.70A.030(21)
- Reference to the current wetland delineation manual should be updated to "the approved federal wetland delineation manual and applicable regional supplements." This is the language in WAC 173-22-035.
- The regulation for "isolated wetland" is out of date and should be supplemented by additional criteria. We were referred to Wetlands & CAO Updates: Guidance for Small Cities, Western Washington Version, Dept. of Ecology, Second Revision October 2012, page A-4 ("Small Cities Guidance").
- Existing wetland buffers are not consistent with Best Available Science (BAS)
- The city's wetland mitigation requirements are not consistent with the Joint Corps/EPA/Ecology guidance

Several other amendments were identified using the checklist provided by Growth Management Services (Dept. of Commerce), which lists state requirements with statute references. Amendments identified through the Checklist are as follows:

- Critical Area Reports must be based on BAS;
- Habitat Conservation Areas must include provisions for "anadromous fisheries."
- Protection of aquifer recharge areas and groundwater used for public water supplies

Regarding modification to state guidelines pertaining to wetland buffers, the city may include provisions to address local conditions that modify provisions required by the state, if the city can justify the changes. (Small Cities Guidance, page 11).

- To address local conditions the draft amendments add flexibility under the wetland buffer averaging standards, and where the existing buffer width is degraded or has been compromised by development.

**Comment 2:**

Has staff conducted an economic impact study?

**Response:**

No. Economic impacts are not covered by SEPA, and staff resources and budget are not adequate for such a study. In addition, relatively few properties in the city are affected by the wetland regulations, as the larger, high quality wetlands are on Port property.

Comment 3:

Having the proposal reviewed by an expert would be helpful.

Response:

The State employs experts in all facets of natural systems and various types of critical areas in the Department of Ecology. Throughout the process staff have reviewed guidance documents developed by Ecology, Growth Management Services, King County and the USGS, and consulted with Ecology staff in phone conversations and via email. Drafts in several stages of development were sent to state agencies for the required 60-day review (March 4) and through the SEPA process (April 19), and the public review draft was sent to all four of the water districts serving the city (April 20). Staff also consulted with Valley View Sewer District and resident experts in surface and ground water matters on staff in Public Works and CED.

***Comments from Councilmember Forscher:***

Comment 1:

Concern about the concept of “human induced change”

Response:

See response to Mr. Tapio’s Comment 1 above.

Comment 2:

Critical Aquifer Recharge Areas (CARA) should not be considered the same as wellhead protection areas.

Response:

Department of Ecology recommends the approach that is proposed in the draft amendments.

For Further Consideration

Staff would consider not including wellhead protection areas specifically as a category of CARA. In that case staff would recommend retaining the regulations for Category 1 CARA as proposed, but identifying them as Wellhead Protection Area regulations.

Comment 3:

Areas with low risk of contamination [to ground water] should be excluded from the (CARA) regulations

Response:

See response to Mr. Tapio’s Comment 4, above.

Comment 4:

There is uncertainty about what areas are recharging the wells located in the city.

Response:

Although recharge to the aquifers underlying the city may be occurring outside the city (the aquifers extend beyond city boundaries), they are also likely being recharged by groundwater in the city moving through subsurface layers. See response to Mr. Tapio’s Comment 4, above.

Comment 5:

Concern expressed about the economic impact of the CARA regulations.

Response:

See response to Mayor Siefkes Comment 2, above.

***Comments from Peter Kwon:***

Comment:

Question about what constitutes a qualified wetland scientist.

Response:

WAC 365-195-905(4) states the following:

Whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science

The definition for “Qualified Professional” used in the draft amendments (see page 7 of the draft) comes from the document Wetlands & CAO Updates: Guidance for Small Cities, Western Washington Version, Dept. of Ecology, Second Revision October 2012, p. B-5. That definition is clearly derived from the WAC quoted above.

In his comments, Mr. Kwon seemed to suggest that the code should require a “licensed hydrogeologist” as the qualified professional for wetland studies. Hydrogeology is the area of geology that deals with the distribution and movement of groundwater in the soil and rocks of the earth's crust (commonly in aquifers). Wetland professionals need expertise in a broader range of disciplines because wetland identification and classification criteria include the presence or absence of water, certain soil types, certain types of plants and, more recently, characteristics of terrestrial habitats necessary for wetland-dependent species that require both aquatic and terrestrial habitats.

**3. Staff Recommendation**

Staff recommends the incorporation of all suggestions under the “For Further Consideration” sections.