

Excerpt from Seattle's Environmentally Critical Areas Code

25.09.200 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 be 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 Ordinance 122050¹; 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.

(Ord. [122050](#) Section 1, 2006; Ord. 116976 Section 8, 1993; Ord. 116253 Section 1(part), 1992.)

1. Editor's Note: Ordinance [122050](#) became effective May 9, 2006.