

Linda Egostick.

Numbers in the ECA code

Within the Sammamish ECA code are many quantitative requirements – things like required widths of critical area buffers and percent reductions achievable by mitigation. These numbers lack citations as to their bases in science and the law, and in many cases appear to be arbitrary. It was the expectation of CFS and, we believe, the implication of the RFP that the consultant would supply the basis for each of these numbers where such basis exists, i.e.,

- The BAS, if any, that supports it
- The statutory basis, if any
- How the requirement compares to that of peer jurisdictions

The following table lists all these numbers as appear in the sections on the various types of critical areas. CFS recommends that the consultant be directed to provide entries in the three columns for citations to the extent that such bases exist. (Note that these entries should be specific citations, not general references that leave it to the city to find material that may or may not be present.) A Comments column is provided for brief notations such as “No applicable science” or “Applies to undeveloped land only”, or for referencing more extensive notes as appropriate.

Alternately, if the city has maintained records of the sources of these numbers, CFS recommends that the city fill in the table, or collaborate with the consultant, where such is the case.

In the course of doing this a distinction should be made wherever applicable between developed and undeveloped land and urban vs. rural/forest settings. The Comments column could be used for this purpose, or another column added for indicating applicability in this regard.

EXHIBIT NO. 60



Code reference	Description	BAS citations	Legal citations	Peer jurisdiction references	Comments
21A.50...					
Erosion hazard areas					
.225 (3) (c)	75% of max net density				
.225 (3) (c) (iii)	2000 sf imperv. surface				
.225 (3) (d)	2000 sf imperv. surface				
.225 (3) (d) (iv)	200 sf imperv. surface				
.225 (3) (e)	25% open space				
.225 (3) (f)	35% max imperv. surface				
Landslide hazard areas					
.260 (1)	50 ft buffer				
.260 (2)	15 ft min buffer				
.260 (5) (a)	40% slope				
.260 (5) (b)	40% slope				
.260 (6)	2000 sf imperv. surface				
.260 (6) (d)	200 sf imperv. surface				
.260 (7) (a)	40% slope				
.260 (7) (a)	20 ft elevation change				
Critical aquifer recharge areas					
.280 (1) (a)	75% infiltration				
.280 (1) (a) (iv)	700 sf imperv. surface				
.280 (1) (a) (iv)	year 2005 reference				
.280 (3) (b) & (b) (i)	Hazardous material reporting thresholds				
.280 (3) (c) (iii)	1300 ft distance				
.280 (3) (c) (iv)	1300 ft distance				
.280 (5) (b) (ii)	10,000 sf landscape area				
.280 (5) (d)	20 gal hazardous mt'l				
.280 (5) (e)	100 cy fill				

.280 (5) (f)	One acre lot size				
.280 (5) (f) (i)	80% nitrogen removal				
Wetlands					
.290 (1)	Buffer widths in table				
.290 (1) (a)	50% min buffer distance				
.290 (1) (b)	50% min buffer distance				
.290 (5)	25 ft beyond top				
.290 (6) (c)	50% minimum width				
.290 (6) (d)	50% minimum width				
.290 (7)	50 ft minimum increase				
.290 (7)	300 ft proximity				
.290 (8)	50% max reduction				
.290 (8)	5-yr monitoring period				
.290 (8) (a)	20% reduction				
.290 (8) (b) (i)	10% max reduction				
.290 (8) (b) (ii)	20% max reduction				
.290 (8) (c)	10% max reduction				
.290 (8) (c)	5-yr monitoring period				
.290 (8) (d)	10% max reduction				
.290 (8) (e)	10% max reduction				
.290 (8) (f) (i)	10% max reduction				
.290 (8) (f) (ii)	20% max reduction				
.290 (8) (g)	10% max reduction				
.290 (8) (h)	50% max reduction				
.300 (5) (d)	12 in max tree diameter				
.300 (5) (h)	15 ft max road width				
.300 (9) (a)	3 dwelling units per acre				
.300 (9) (b)	75% build-out				
.310 (6) (a)	Acreage ratios in table				
.310 (7) (b)	Double the acreage				

.320	1000 sf exemption				
.322 (3) (a)	8% max imperv. surface				
.322 (3) (b)	50% min native veg				
.322 (3) (d) (i)	50% of area for trees				
.322 (3) (d) (ii)	50% ref. to 21A.25.030				
.322 (3) (d) (iii)	0.0096 signif trees per sf				
.322 (3) (d) (iv)	0.012 trees per sf				
.322 (3) (d) (iv) (A)	Coniferous trees at least 3 ft tall				
.322 (3) (d) (iv) (B)	Deciduous trees at least 3 ft tall				
Wildlife habitat corridors					
.327 (2) (b)	300 ft target width				
.327 (2) (b)	150 ft minimum width				
Streams					
.330 (1)	Buffer widths in table				
.330 (1) (a)	50% min buffer distance				
.330 (1) (b)	50% min buffer distance				
.330 (2)	25 ft from toe of slope				
.330 (2)	30% to 40% slope range				
.330 (2) (a)	25ft beyond top of slope				
.330 (2) (b)	25 ft additional buffer				
.330 (4) (c)	50% max buffer reduct'n				
.330 (4) (d)	50% max buffer reduct'n				
.330 (6)	50% max buffer reduct'n				
.330 (6)	5-yr monitoring period				
.330 (6) (a)	20% max reduction				
.330 (6) (b) (i)	10% max reduction				
.330 (6) (b) (i)	50% imperv. surface				
.330 (6) (b) (ii)	20% max reduction				

.330 (6) (b) (ii)	50% imperv. surface				
.330 (6) (c)	10% max reduction				
.330 (6) (c)	5-yr monitoring period				
.330 (6) (d) (i)	20% max reduction				
.330 (6) (d) (ii)	30% max reduction				
.330 (6) (e)	10% max reduction				
.330 (6) (f)	10% max reduction				
.330 (6) (g) (i)	10% max reduction				
.330 (6) (g) (ii)	20% max reduction				
.330 (6) (h)	10% max reduction				
.340 (7) (f)	4 ft utility depth				

Testimony to 4/5/2012 Planning Commission meeting
From: Reid Brockway
Subject: Administrative issues relating to ECA code

The emphasis thus far has been on what you might call the “technical” side of the ECA code – certain types of critical areas and associated regulations. There are also issues of an administrative nature, such as:

- The lack of a less burdensome alternative to legal or quasi-legal action to resolve a dispute over code interpretation between a citizen or developer and the city. We need to be considering an ombudsman function.
- Ambiguity and inconsistency in the grandfathering provisions. Note that this extends beyond the ECA code of 21A.50. Section 21A.70 addresses nonconforming uses, under which would fall, for example, maintaining landscaping in a stream buffer. Notably, I have had one staff person tell me 21A.70 applies to ECAs and another tell me it does not. This kind of ambiguity leads to arbitrariness and needs to be fixed.
- The presence of “red tape” – unreasonable and burdensome requirements for obtaining permission to do simple things, and the accompanying hassle and expense. One example of this is the requirement to get “a state or federal permit or approval” to plant a non-native species in a stream buffer (21A.50.340 (3)). Is that reasonable? Not if someone wants to replace a decorative shrub in their yard which is over 100 feet away from a little stream on the other side of a neighbor’s house, and the stream has been categorized Type F and thus has a 150 ft buffer on each side. A state or federal permit should not be required for that.

Now, staff may assert that some of these things are not problems because plan reviewers have the option not to require them of applicants. But the trouble is, we have seen staff take literal and unyielding positions on such matters in the recent past, saying, in effect, they have to abide by the letter of the code (as they interpret it). I can provide examples if need be. The code should not say what is unreasonable and not really intended, nor rely on people ignoring it and doing things under the radar. This kind conflict between what the code says and what is reasonable needs to be fixed.

I’m calling these administrative things because they are not necessarily associated with a specific kind of critical area and not the kinds of things science or state statute are likely to address. And I doubt, from what I’ve seen thus far, that the consultant will raise them as issues given how his task was defined.

An earlier version of the “CAO update process” schedule had the topic, “Administrative”, in the first group of topics. However it had a question mark after it and was later deleted. It is a legitimate, important subject for review and needs to be back on our schedule.

EXHIBIT NO. 61.

April 3, 2012

Sammamish Planning Commission

Re: 2012 Environmentally Critical Areas update:

After reviewing the related materials prepared and posted for the update process and other data from the City WEB site, I offer the following comments.

CITY MAPS: Need to be meaningful & useful.

The Critical areas maps on the City WEB site are severely outdated, incomplete, overly complex and difficult to use. I recommend that **each** of the CA maps be reviewed and revised with up-to-date data, limited to a single Critical Area type per map and have each overlay clearly labeled and cross-referenced to the relevant code section. A typical property owner should be able to get pertinent information for their property on-line without having to rely on staff to interpret the information for them. In addition, all overlays shown should be advisory only and trigger further investigation as to whether the property is actually affected by a Critical area. NEVER SHOULD AN OVERLAY REPRESENT A BLANKET PROHIBITION ON ANY ACTIVITY.

PROFESSIONAL INPUT: More can be done.

Some time ago I suggested that in order to get a real understanding as to just how effective and how easily used the current Critical Areas ordinance is, the Planning Commission should be talking with the most prolific **applicants** for Land Use permits. Not necessarily the property owners who often have an emotional and vested interest in the outcome, but the consultants: the Architects, Builders and Planning professionals who interface with the City staff to work through the regulations to achieve workable solutions *and who have experience with other jurisdictions as well*. As such a professional, I recommend that the PC ask City staff for a list of the 10 or 12 *most prolific* Land Use applicants who can be contacted for an in depth review of the current permitting process and asked for their input for the update process.

BOOKENDS: What are the non-negotiables?

Based on the November 2011 'Known Topics' and from subsequent discussions, I was under the impression that one of the first tasks in the update process would be to identify the non-negotiables, Federal, State & County regulations, or "Bookends" which the local jurisdiction has no authority to change. This seems like an appropriate approach so that valuable time would not be wasted reviewing these items. Has this been established? Is there a published 'bare bones' ordinance of only these regulations? This seems like a rather straight forward task that should not take much time to prepare.

EXHIBIT NO.

62.

WHO PAYS?: The ultimate in 'fairness'.

As we get further into the ECA update process it is becoming increasingly apparent that, while these regulations are intended to benefit the entire community, the financial burden for these regulations falls entirely on the individual property owner who is unlucky enough to have an ECA located on *or near* their property. During the last two Planning Commission meetings there has been a fair amount of talk about fairness and applying the regulations in a fair manner; and rightly so. The nature of the ECA ordinance dictates that some privately owned property will face restrictions and limitations on development potential that other properties will not. Likewise, some already developed properties located near ECA's will find it more difficult and costly to make simple changes to their homes or landscaping. Fair?

And these restrictions can be very severe indeed. While the effects of this ordinance will vary depending on the type of Critical Area involved, there will always be a financial impact, either in added development costs or reduced property value, as the property will no longer support the level of development that neighboring non-impacted properties will enjoy. For some the financial impact will be rather small (a few thousand dollars for added environmental consulting), for others it can be severe (literally tens of thousands of dollars or more). Again I ask, is this fair?

These regulations are in place presumably because the community, as a whole, is demanding that the natural resources and environment be protected from degrading practices and be maintained for the good of the community. So this begs the question:

If these regulations are implemented at the behest of the community and will serve to benefit the entire community, why is the financial burden associated with the implementation this ordinance borne solely by the few landowners who wish to improve or enhance the enjoyment of their private property?

The answer to this question should have a significant impact on the Planning Commission's recommendations to the City Council. If the financial burden for protecting the community's environment is shared by the beneficiary community, then additional protective measures could be justified. If not, then the City has no business increasing the burden on individual property owners beyond the non-negotiable 'bookends' noted above. I suggest that the PC ask the City Council for clarification regarding the possibility of the community sharing the financial burdens of these regulations.

Sincerely,



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