



Department of Community Development

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To: Planning Commission

June 9, 2012

From: Evan Maxim, Senior Planner

RE: Staff Recommendation Memo #5: (REVISED June 28, 2012)

Administrative Edits - ECA Regulations

Background:

This memorandum summarizes the “administrative” amendments to the existing Environmentally Critical Areas (ECA) regulations based upon the public comments and the city staff’s review. If additional amendments are identified, they will be incorporated into this memorandum and relayed to the Planning Commission as part of their review in July.

These amendments are not directly based upon the Best Available Science (BAS) reports prepared by the City’s consultant, although some of the topical areas may overlap with BAS recommendations. The edits are intended to clarify and/or improve the administration of the ECA regulations.

Please note that this “Staff Recommendation Memo #5” has been prepared for Planning Commission review on June 14th and has been supplied before “Staff Recommendation Memo #4”. The Planning Commission will also be considering recommended edits coming from the landslide hazard area, erosion hazard area, and erosion hazard near sensitive water body overlay BAS reports; the edits associated with these ECA features will be summarized in “Staff Recommendation Memo #4”, which will be distributed in advance of the June 28th meeting.

Summary: The numbering within this document will correspond to the numbering assigned to the proposed amendments contained in the forthcoming and attached draft code amendments. Draft code language has not yet been prepared for the proposed amendments below, but will be included with the forthcoming draft regulations that will be reviewed in July.

Staff recommends *advancing* all of the proposed amendments listed below.

Staff review. The staff has identified the following amendments to the Environmentally Critical Areas Regulations based upon experience with the implementation of the current regulations:

- 5-1. Clarify the Partial Exemption provisions contained in SMC 21A.50.060. The current language contained in the partial exemption section of the ECA regulations is imprecise and at times appears to be contradictory. These proposed edits would be focused entirely on re-formatting and basic editing for clarity.
- 5-2. Revise the provisions for select vegetation removal contained in SMC 21A.50.060. The current language does not provide guidance on replacement plantings (e.g. type of plants, quantities, etc). The proposed amendment would provide further parameters around the noxious weed / vegetation removal, requirements for replanting, and provide a threshold for the total area of vegetation removal (such that a permit is required after 2,500 square feet of vegetation removal). Some of these edits would result in a change to the administrative provisions contained within this section to more closely match existing city practices.
- 5-3. Clarify the provisions and restrictions on removal of large woody debris contained in SMC 21A.50.060. The current restrictions are mis-located in the ECA regulations. The proposed amendments would re-locate and clarify the limitations on removing large woody debris in wetlands, streams, and associated buffers.
- 5-4. Clarify the use of and extent of mapping of critical areas contained in SMC 21A.50.090. The current language would be modified to specify which maps are used as a definitive guide to the location of regulated ECA features, and which maps are used to generally identify that ECA features may be present. The proposed

- amendments would clarify which ECA features were subject to “field verification” related to location of the ECA feature.
- 5-5. Clarify the use of and extent of mapping of critical areas contained in SMC 21A.50.090. The current language would be modified to specify which maps are used as a definitive guide to the location of regulated ECA features, and which maps are used to generally identify that ECA features may be present. The proposed amendments would clarify which ECA features were subject to “field verification” related to location of the ECA feature.
 - 5-6. Revise the requirements for critical areas studies contained in SMC 21A.50.130. The current language would be modified to clarify that the critical areas study would be prepared using guidance based on BAS. Also modify the existing language to provide for digital or photographic records of the site before and after alteration.
 - 5-7. Revise the signage and fencing requirements contained in SMC 21A.50.170. The proposed revisions would authorize sensitive areas signage and fencing where not already required when the city staff determines that such ECA signage or fencing would assist in the protection of the ECA feature.
 - 5-8. Revise SMC 21A.50.260(2)(a) such that critical areas studies for landslide hazard areas cannot be waived. The current regulations allow the city to waive critical areas studies if adjacent properties have been evaluated. The proposed amendments would eliminate a full waiver of the critical area study, but allow for a reduced critical areas review based upon information from adjacent properties. **Please note** this recommendation as included in AMEC’s BAS report, but is actually administrative in nature.
 - 5-9. Clarify the provisions for previously established wetland and stream buffers contained in SMC 21A.50.290(1)(b) and 21A.50.330(1)(b). The current language allows for situations where a buffer has been previously established through development review and the buffer width is permanently recorded on title, the buffer remains as previously established, provided it is at least as large as 50 percent of the required standard buffer distance. The proposed revisions would clarify that this provision applies to tracts and other types of parcels and clarify that the provision is not available if the buffer is less than 50 percent of the currently required buffer.
 - 5-10. Clarify the wetland buffer averaging provisions contained in SMC 21A.50.290. The proposed clarifications would note that buffer averaging does not allow for a reduction on the width of the buffer for one wetland and an expansion of the buffer width on another wetland.
 - 5-11. Clarify the wetland buffer and stream buffer averaging provisions contained in SMC 21A.50.290 and 21A.50.330. The proposed clarification would note that buffer averaging associated with a development proposal could not increase encumbrances on neighboring properties not owned by the applicant.
 - 5-12. Clarify livestock standards for wetlands and stream protections standards contained in SMC 21A.50.290 and 21A.50.340. The proposed clarification would prohibit the introduction of livestock into wetland and stream buffers. (No change is proposed to the existing use provisions for previously established livestock grazing areas).
 - 5-13. Clarify the allowance of stormwater discharge at the edge of wetland and stream buffers in SMC 21A.50.300 and 21A.50.340. The clarification would note that discharge facilities should be located outside of the wetland or stream buffer where possible.
 - 5-14. Clarify the restoration requirements for wetlands streams, and stream / wetland buffers contained in SMC 21A.50.310 and SMC 21A.50.350. The proposed clarifications note that where unpermitted clearing occurred, restoration efforts must include installation of like kind and density, or better, of native vegetation even if non-native vegetation previously existed in the unpermitted cleared area.
 - 5-15. Clarify the limitations on introducing non-native vegetation in SMC 21A.50.300 and 21A.50.340. The existing regulations only allow introduction of non-native vegetation into stream or wetland buffers with a federal or state permit approval. The intent of this section was to recognize that such introduction may be required by state or federal permit conditions, however the section is worded in a confusing manner and appears to limit existing development.
 - 5-16. Clarify the stream and habitat restoration or enhancement provisions in SMC 21A.50.340. The proposed clarifications allow for stream / habitat restoration where such restoration has been approved by another applicable state agency. This would remove a current barrier for voluntary stream / habitat restoration.
 - 5-17. Eliminate the “naturally occurring ponds” provisions contained in 21A.50.351. This section is a remnant from when lakes were included in the ECA.
 - 5-18. Relocated definitions for Lake Management Areas to the definition chapter (SMC 21A.15) from SMC 21A.50.355. The definitions contained in this section should be located with the other definitions contained in chapter 15 for consistency.
 - 5-19. Provide additional administrative authority to address possible negative incentives. Several of the proposed flexibility provisions or amendments to the code may result in a negative incentive for property owners (i.e. an

incentive to not comply with proposed or existing regulations). The proposed amendments would provide the city with tools to address these situations.

Public Comment recommendations. The staff has identified the following administrative amendments to the Environmentally Critical Areas Regulations based upon public comment for the Planning Commission to consider advancing to July:

- 5-20. Clarify the “existing development” or legal non-conforming regulations as applied to ECA regulations. In evaluating legally established existing development or site improvements, it is currently necessary to review sections of SMC 21A.50 and SMC 21A.70. The proposed revisions would clarify between the two chapters the protections afforded to legally established development or site improvements. No substantive change to these protections is proposed.

Staff comment: Staff recommends *advancing* this amendment for additional consideration in July.