

## ORDINANCE NO. 3935

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO AMEND THE CRITICAL AREAS ORDINANCE, SPECIFICALLY SECTIONS ECDC 23.40.220, 23.40.320, 23.50.020, 23.50.040, AND 23.90.040, TO ALLOW DEVELOPMENT WITHIN LEGALLY ESTABLISHED IMPERVIOUS AREAS AND WITHIN BUFFER AREAS THAT ARE PHYSICALLY SEPARATED AND FUNCTIONALLY ISOLATED FROM AN ASSOCIATED CRITICAL AREA.

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WHEREAS, the City's critical areas ordinance (CAO) was developed based on 'best available science' (BAS); and

WHEREAS, the BAS assessment concluded that because the city was mostly developed, the main route to improving critical areas and their buffers was to require buffer enhancement in exchange for allowing development and redevelopment to occur within the footprint of already-developed areas; and

WHEREAS, it was intended that this approach would be reflected in the City's adopted CAO; and

WHEREAS, the relationship of an allowed activity to the "footprint of development" was directly related to the BAS discussion noted above, but the language also includes the phrase "existing structures" which conflicts with the general concept of connecting allowable development activity to the "footprint of development;" and

WHEREAS, this has had unfortunate consequences which are counter to the intent of the BAS; and

WHEREAS, two recent development proposals have raised awareness of the unintended limitations of the current code; and

WHEREAS, the City of Edmonds may adopt an interim zoning ordinance for a period of up to six months pursuant to RCW 36.70A.390, provided that the City Council holds a public hearing on the interim ordinance within sixty days of adoption;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN  
AS FOLLOWS:

Section 1. Section 23.40.220 of the Edmonds Community Development Code, entitled “Allowed activities,” is hereby amended to read as shown on Attachment A (new text is shown in underline; deleted text is shown in ~~strike-through~~).

Section 2. Section 23.40.320 of the Edmonds Community Development Code, entitled “Definitions pertaining to critical areas,” is hereby amended to read as shown on Attachment A (new text is shown in underline; deleted text is shown in ~~strike-through~~).

Section 3. Section 23.50.020 of the Edmonds Community Development Code, entitled “Allowed activities – Wetlands,” is hereby amended to read as shown on Attachment A (new text is shown in underline; deleted text is shown in ~~strike-through~~).

Section 4. Section 23.50.040 of the Edmonds Community Development Code, entitled “Development standards – Wetlands,” is hereby amended to read as shown on Attachment A (new text is shown in underline; deleted text is shown in ~~strike-through~~).

Section 5. Section 23.90.040 of the Edmonds Community Development Code, entitled “Development standards – specific habitats,” is hereby amended to read as shown on Attachment A (new text is shown in underline; deleted text is shown in ~~strike-through~~).

Section 6. Sunset. This ordinance shall remain in effect for 180 days from the effective date, after which point it shall have no further effect.

Section 7. Severability. If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 8. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

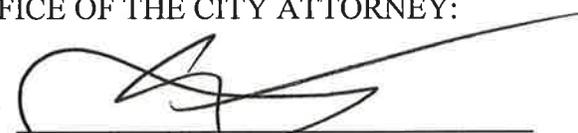
APPROVED:

  
MAYOR DAVID O. EARLING

ATTEST/AUTHENTICATED:

  
CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY   
JEFF TARADAY

FILED WITH THE CITY CLERK:	08-02-2013
PASSED BY THE CITY COUNCIL:	08-06-2013
PUBLISHED:	08-11-2013
EFFECTIVE DATE:	08-16-2013
ORDINANCE NO. <u>3935</u>	

**SUMMARY OF ORDINANCE NO. 3935**

of the City of Edmonds, Washington

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On the 6<sup>th</sup> day of August, 2013, the City Council of the City of Edmonds, passed Ordinance No. 3935. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO AMEND THE CRITICAL AREAS ORDINANCE, SPECIFICALLY SECTIONS ECDC 23.40.220, 23.40.320, 23.50.020, 23.50.040, AND 23.90.040, TO ALLOW DEVELOPMENT WITHIN LEGALLY ESTABLISHED IMPERVIOUS AREAS AND WITHIN BUFFER AREAS THAT ARE PHYSICALLY SEPARATED AND FUNCTIONALLY ISOLATED FROM AN ASSOCIATED CRITICAL AREA.

The full text of this Ordinance will be mailed upon request.

DATED this 7<sup>th</sup> day of August, 2013.

  
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CITY CLERK, SANDRA S. CHASE

**23.40.220 Allowed activities.**

A. Critical Area Report. Activities allowed under this title shall have been reviewed and permitted or approved by the city of Edmonds or other agency with jurisdiction, but do not require submittal of a critical area report, unless such submittal was required previously for the underlying permit. The director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this title to protect critical areas.

B. Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city may observe or require independent inspection of the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. Allowed Activities. The following activities are allowed:

1. *Permit Requests Subsequent to Previous Critical Areas Review.* Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits) and construction approvals (such as building permits) if all of the following conditions have been met:

- a. The provisions of this title have been previously addressed as part of another approval;
- b. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
- c. The permit or approval has not expired or, if no expiration date, no more than five years have elapsed since the issuance of that permit or approval; and
- d. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;

2. *Modification to Structures Existing Outside of Critical Areas and/or Buffers.*

Structural modification of, addition to, or replacement of a legally constructed structure existing outside of a critical area or its buffer that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement;

3. *Permitted Alteration to Structures Development proposals within footprint of development Existing Within Critical Areas and/or Buffers.* ~~Permitted alteration Development proposals to a legally constructed structure existing within a critical area or buffer that in the footprint of development within critical areas and/or buffers may be allowed as long as the proposed development does not:~~

- ~~a. does not increase the footprint of development beyond the legally established footprint; or~~
- ~~b. does not increase the impact to the critical area and/or buffer; and there is no or~~
- ~~c. does not increase the total impervious surface area of the site;~~
- ~~d. does not increased risk to life or property as a result of the proposed modification, or replacement development proposal; and~~

e. includes measures to enhance the critical area and/or buffer in a way that improves its function and value.

~~(additions-Additions or expansions~~ to legally constructed structures existing within a critical area and/or buffer that do increase the ~~existing legally established~~ footprint of development shall be subject to and permitted in accordance with the development standards of the associated critical area type (see, e.g., ECDC 23.50.040 and 23.90.040)). This ~~provision-subsection C.3~~ shall be interpreted to supplement the provisions of the Edmonds Community Development Code relating to nonconforming structures in order to permit the full reconstruction and/or redevelopment of a legal nonconforming ~~building structure~~ within its footprint;

4. Activities Within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway;

5. Minor Utility Projects. Utility projects that have minor or short-duration impacts to critical areas, as determined by the director in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased storm water. Such allowed minor utility projects shall meet the following criteria:

a. There is no practical alternative to the proposed activity with less impact on critical areas;

b. The activity involves the placement of utility pole(s), street sign(s), anchor(s), or vault(s) or other small component(s) of a utility facility; and

c. The activity involves disturbance of an area less than 75 square feet;

6. Public and Private Pedestrian Trails. New public and private pedestrian trails subject to the following:

a. The trail surface shall meet all other requirements, including water quality standards set forth in the current editions of the International Residential Code and International Building Code, as adopted in ECDC Title 19;

b. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and

c. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report;

7. Select Vegetation Removal Activities. The following vegetation removal activities:

a. The removal of the following vegetation with hand labor and light equipment:

i. Invasive and noxious weeds;

ii. English ivy (*Hedera helix*);

iii. Himalayan blackberry (*Rubus discolor*, *R. procerus*);

iv. Evergreen blackberry (*Rubus laciniatus*);

v. Scot's broom (*Cytisus scoparius*); and

vi. Hedge and field bindweed (*Convolvulus sepium* and *C. arvensis*);

- b. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:
- i. The applicant submits a report from an ISA- or ASCA-certified arborist or registered landscape architect that documents the hazard and provides a replanting schedule for the replacement trees;
  - ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
  - iii. All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation or unless removal is warranted to improve slope stability;
  - iv. The land owner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (two to one) within one year in accordance with an approved restoration plan. Replacement trees may be planted at a different, nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one inch in diameter at breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;
  - v. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and
  - vi. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the land owner prior to receiving written approval from the city; provided, that within 14 days following such action, the land owner shall submit a restoration plan that demonstrates compliance with the provisions of this title;
- c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW; provided, that the removed vegetation shall be replaced in kind or with similar native species within one year in accordance with an approved restoration plan; and
- d. Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a fish and wildlife habitat conservation area or wetland shall be prohibited;
8. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and
9. Navigational Aids and Boundary Markers. Construction or modification of navigational aids and boundary markers. [~~Ord. 3527 § 2, 2004~~].

**23.40.320 Definitions pertaining to critical areas.**

For the purposes of this chapter and the chapters on the five specific critical area types (Chapters 23.50, 23.60, 23.70, 23.80 and 23.90 ECDC) the following definitions shall apply:

“Adjacent” means those areas located within 200 feet of a development proposal or subject parcel and those areas located within 800 feet of a documented bald eagle nest.

“Alteration” means any human-induced action which changes the existing condition of a critical area or its buffer. Alterations include, but are not limited to: grading; filling; dredging; draining; channelizing; cutting, pruning, limbing or topping, clearing, relocating or removing vegetation; applying herbicides or pesticides or any hazardous or toxic substance; discharging pollutants; paving, construction, application of gravel; modifying for surface water management purposes; or any other human activity that changes the existing landforms, vegetation, hydrology, wildlife or wildlife habitat value of critical areas.

“Best management practices” means a system of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxics;
2. Control the movement of sediment and erosion caused by land alteration activities;
3. Minimize adverse impacts to surface and ground water quality, flow, and circulation patterns; and
4. Minimize adverse impacts to the chemical, physical, and biological characteristics of critical areas.

“Buffer” means the designated area immediately next to and a part of a steep slope or landslide hazard area and which protects slope stability, attenuation of surface water flows and landslide hazards reasonably necessary to minimize risks to persons or property; or a designated area immediately next to and part of a stream or wetland that is an integral part of the stream or wetland ecosystem.

“Chapter” means those sections of this title sharing the same third and fourth digits.

“City” means the city of Edmonds.

“Class” or “wetland class” means descriptive categories of wetland vegetation communities within the wetlands taxonomic classification system of the U.S. Fish and Wildlife Service (Cowardin, et al., 1979).

“Clearing” means the act of cutting and/or removing vegetation. This definition shall include grubbing vegetation and the use or application of herbicide.

“Compensation project” means an action(s) specifically designed to replace project-induced critical area or buffer losses. Compensation project design elements may include, but are not limited to: land acquisition procedures and detailed plans including functional value assessments, detailed landscaping designs, construction drawings, and monitoring and contingency plans.

“Compensatory mitigation” means replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

1. "Restoration" means actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.
2. "Creation" means actions performed to intentionally establish a wetland at a site where it did not formerly exist.
3. "Enhancement" means actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
4. "Preservation" means actions taken to ensure the permanent protection of existing high-quality wetlands.

"Creation" means a compensation project performed to intentionally establish a wetland or stream at a site where one did not formerly exist.

"Critical areas" for the city of Edmonds means wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas as defined in Chapters 23.50, 23.60, 23.70, 23.80 and 23.90 ECDC, respectively.

"Development proposal" means any activity relating to the use and/or development of land requiring a permit or approval from the city, including, but not limited to: commercial or residential building permit; binding site plan; conditional use permit; franchise; right-of-way permit; grading and clearing permit; mixed use approval; planned residential development; shoreline conditional use permit; shoreline substantial development permit; shoreline variance; short subdivision; special use permit; subdivision; flood hazard permit; unclassified use permit; utility and other use permit; variance; rezone; or any required permit or approval not expressly exempted by this title.

"Director" means the city of Edmonds development services director or his/her designee.

"Division" means the planning division of the city of Edmonds development services department.

"Enhancement" means an action taken to improve the condition and function of a critical area. In the case of wetland or stream, the term includes a compensation project performed to improve the conditions of an existing degraded wetland or stream to increase its functional value.

"Erosion" means the process in which soil particles are mobilized and transported by natural agents such as wind, rain, frost action, or stream flow.

Erosion Hazard Areas. See ECDC 23.80.020(A).

Fish and Wildlife Habitat Conservation Areas. See Chapter 23.90 ECDC.

"Floodplain" means the total area subject to inundation by a "100-year flood." "One-hundred-year flood" means a flood having a one percent chance of being equaled or exceeded in any given year.

Frequently Flooded Areas. See Chapter 23.70 ECDC.

"Footprint of development" means the area of a site that contains legally established impervious surfaces.

"Functions" means the roles served by critical areas including, but not limited to: water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; ground water recharge and

discharge; erosion control; wave attenuation; aesthetic value protection; and recreation. These roles are not listed in order of priority.

Geologically Hazardous Areas. See Chapter 23.80 ECDC.

“Geologist” means a person licensed as a geologist, engineering geologist, or hydrologist in the state of Washington who has earned a degree in geology from an accredited college or university and has at least five years of experience as a practicing geologist or four years of experience and at least two years of postgraduate study, research or teaching. The practical experience shall include at least three years of work in applied geology and landslide evaluation in close association with qualified, practicing geologists and geotechnical/civil engineers.

“Geotechnical engineer” means a practicing geotechnical/civil engineer licensed as a professional civil engineer in the state of Washington who has at least four years of professional employment as a geotechnical engineer in responsible charge including experience with landslide evaluation.

“Grading” means any one or a combination of excavating, filling, or disturbance of that portion of the soil profile which contains decaying organic matter.

“Habitats of local importance” include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, shorelines, coastal beaches, mudflats, eel-grass beds, and wetlands. [See ECDC 23.90.010(A)(4).]

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as it occurs under natural conditions prior to development, resulting in storm water runoff from the surface in greater quantities or at an increased rate of flow compared to storm water runoff characteristics under natural conditions prior to development. Common impervious surfaces include (but are not limited to) rooftops, walkways, patios, driveways, parking lots or storage areas, outdoor swimming pools, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces that similarly impede the natural infiltration of storm water.

Landslide Hazard Areas. [See ECDC 23.80.020(B).]

“Mitigation” means the use of any or all of the following actions, which are listed in descending order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps such as project redesign, relocation, or timing to avoid or reduce impacts;
3. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
6. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

“Native vegetation” means vegetation comprised of plant species which are indigenous to the Puget Sound region and which reasonably could have been expected to naturally occur on the site. “Native vegetation” does not include noxious weeds as defined by the state of Washington or federal agencies.

“Noxious weeds” means any plant which, when established, is highly destructive, competitive or difficult to control by cultural or chemical practices, as further listed in Chapter 16-750 WAC.

“Planning staff” means those employed in the planning division of the city of Edmonds development services department.

“Qualified critical areas consultant” or “qualified professional” means a person who has the qualifications specified below to conduct critical areas studies pursuant to this title, and to make recommendations for critical areas mitigation. For areas of potential geologic instability, the qualified critical areas consultant shall be a geologist or geotechnical engineer. For wetlands and streams, the qualified critical areas consultant shall be a specialist in botany, fisheries, wetland biology, and/or hydrology with a minimum of two years’ field experience with wetlands and/or streams in the Pacific Northwest. Requirements defining a qualified critical areas consultant or qualified professional are contained within the chapter on each critical area type.

“Redeveloped land(s)” means those lands on which existing structures are demolished in their entirety to allow for new development. The director shall maintain discretion to determine if the demolition of a majority of existing structures or portions thereof constitute the re-development of a property or subject parcel.

“Restoration” means the actions necessary to return a stream, wetland or other critical area to a state in which its stability, functions and values approach its unaltered state as closely as possible.

Seismic Hazard Areas. [See ECDC 23.80.020(C).]

“Species of local importance” means those species that are of local concern due to their population status, their sensitivity to habitat manipulation, or that are game (hunted) species. [See ECDC 23.90.010(A)(4).]

“Storm Water Management Manual” means the Storm Water Management Manual for the Puget Sound Basin by the Washington State Department of Ecology (as included in Chapter 18.30 ECDC).

“Streams” means any area where surface waters produce a defined channel or bed which demonstrates clear evidence, such as the sorting of sediments, of the passage of water. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices (drainage ditches) or other entirely artificial watercourses unless they are used by

salmonids or used to convey streams naturally occurring prior to construction of such watercourse. Streams are further classified into Categories S, F, Np and Ns and fishbearing or nonfishbearing 1, 2 and 3. [See ECDC 23.90.010(A)(1).]

“Title” means all chapters of the City of Edmonds Development Code beginning with the digits 23.

“Undeveloped land(s)” means land(s) on which manmade structures or land modifications (clearing, grading, etc.) do not exist. The director retains discretion to identify undeveloped land(s) in those instances where historical modifications and structures may have existed on a property or subject parcel in the past.

“Wetlands” means those areas that are inundated or saturated by ground or surface 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 do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage 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. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands if permitted by the city (WAC 365-190-030(22)). Wetlands are further classified into Categories 1, 2, 3 and 4. [See ECDC 23.50.010(B).]

“Wetland functions” means those natural processes performed by wetlands, such as facilitating food chain production; providing habitat for nesting, rearing and resting sites for aquatic, terrestrial or avian species; maintaining the availability and quality of water; acting as recharge and/or discharge areas for ground water aquifers; and moderating surface water and storm water flows. [~~Ord. 3527 § 2, 2004~~].

### **23.50.020 Allowed activities – Wetlands.**

The activities listed below are allowed in wetlands in addition to those activities listed in, and consistent with, the provisions established in ECDC 23.40.220, and do not require submission of a critical areas report, except where such activities result in a loss to the functions and values of a wetland or wetland buffer. These activities include:

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.
- B. The harvesting of wild crops 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, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
- C. Drilling for utilities under a wetland; provided, that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column could be disturbed.

D. Enhancement of a wetland through the removal of nonnative invasive species. Weeding shall be restricted to hand removal and weed material shall be removed from the site. Bare areas that remain after weed removal shall be revegetated with native shrubs and trees at natural densities. Some hand seeding may also be done over the bare areas with native herbs.

E. ~~Permitted alteration to a legally constructed structure existing~~ Development proposals in the footprint of development within a wetland and/or wetland buffer may be allowed as long as the proposed alteration:

a. that does not increase the footprint of development beyond the legally established footprint;

b. does not ~~increase~~ impervious surfacing or increase the impact to a wetland and/or wetland buffer;

c. does not increase the total impervious surface area of the site;

d. does not increase the risk to life or property as a result of the proposed alteration, replacement or redevelopment; and

e. includes measures to enhance the wetland and/or wetland buffer in a way that improves its function and value. [Ord. 3527 § 2, 2004].

### **23.50.040 Development standards – Wetlands.**

A. Activities may only be permitted in a wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.

B. Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this title.

C. Category 1 Wetlands. Activities and uses shall be prohibited from Category 1 wetlands, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of this title.

D. Category 2 Wetlands. With respect to activities proposed in Category 2 wetlands, the following standards shall apply:

1. Water-dependent activities may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland, its buffers and other critical areas.

2. Where non-water-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:

a. The basic project purpose cannot be accomplished as proposed and successfully avoid, or result in less adverse impact on, a wetland on another site or sites in the general region; and

b. All alternative designs of the project as proposed, such as a reduction in the size, scope, configuration, or density of the project, would not avoid or result in less of an adverse impact on a wetland or its buffer.

E. Category 3 and 4 Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category 3 and 4 wetlands and associated buffers in accordance with an approved critical areas report and mitigation plan.

F. Wetland Buffers.

1. Standard Buffer Widths. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then, at the discretion of the director, the buffer width may be increased or an applicant may be required to develop and implement a wetland buffer enhancement plan to maintain the standard width (see subsection (F)(3) of this section). Required standard wetland buffers, based on wetland category, are as follows:

- a. Category 1: 200 feet;
- b. Category 2: 100 feet;
- c. Category 3: 50 feet;
- d. Category 4: 35 feet.

2. Increased Wetland Buffer Widths. The director shall require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

- a. A larger buffer is needed to protect other critical areas;
- b. The buffer or adjacent uplands has a slope greater than 15 percent or is susceptible to erosion and standard erosion control measures will not prevent adverse impacts to the wetland; or
- c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, development and implementation of a wetland buffer enhancement plan in accordance with subsection (F)(3) of this section may substitute.

3. Buffer Width Reductions Through Buffer Enhancement. At the discretion of the Edmonds development services director, wetland buffer width reductions (or approval of standard buffer widths for wetlands where existing buffer conditions require increased buffer widths) may be granted concomitant to the development and implementation of a wetland buffer enhancement plan for Category 3 and 4 wetlands only. Approval of a wetland buffer enhancement plan shall, at the discretion of the director, allow for wetland buffer width reductions to no less than 50 percent of the standard width; provided, that:

- a. The plan provides evidence that wetland functions and values will be increased or retained through plan implementation to at least the level provided by a standard buffer or through additional mitigation;
- b. The plan documents existing native plant densities and provides for increases in buffer native plant densities to no less than three feet on center for shrubs and eight feet on center for trees;

c. The plan requires monitoring and maintenance to ensure success in accordance with ECDC 23.40.130(D); and

d. The plan specifically documents methodology and provides performance standards for assessing increases in wetland buffer functioning as related to:

- i. Water quality protection;
- ii. Provision of wildlife habitat;
- iii. Maintenance of wetland hydrology; and
- iv. Restricting wetland intrusion and disturbance.

4. Wetland Buffer Width Averaging. The director may allow modification of a standard or reduced wetland buffer width in accordance with an approved critical areas report and the best available science on a case-by-case basis by averaging buffer widths. Only those portions of a wetland buffer existing within the project area or subject parcel shall be considered the total standard or reduced buffer for buffer averaging. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

- a. It will not reduce the function and value of wetlands or associated buffers;
- b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
- c. The total area contained in the buffer area, or the total buffer area existing on a subject parcel for wetlands extending off-site, after averaging is no less than that which would be contained within a standard or reduced buffer; and
- d. The buffer width at any single location is not reduced to less than 50 percent of the standard or reduced buffer width.

5. Measurement of Wetland Buffers. All buffers shall be measured from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

6. Buffer Consistency. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter.

7. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this title, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive nonnative weeds is required for the duration of the mitigation bond.

8. Buffer Uses. The following uses may be permitted within a wetland buffer in accordance with the review procedures of this title; provided, they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

- a. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
- b. Passive Recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:
  - i. Walkways and trails; provided, that those pathways are generally constructed with a surface that does not interfere with substrate permeability. Raised boardwalks utilizing nontreated pilings may be acceptable;

- ii. Wildlife viewing structures; and
- iii. Fishing access areas down to the water's edge that shall be no larger than six feet.

c. Storm Water Management Facilities. Storm water management facilities, limited to outfalls, pipes and conveyance systems, storm water dispersion outfalls and bioswales, may be allowed within the outer 25 percent of a standard or modified buffer for Category 3 or 4 wetlands only; provided, that:

- i. No other location is feasible; and
- ii. The location and function of such facilities will not degrade the functions or values of the wetland.

Storm water management facilities are not allowed in buffers of Category 1 or 2 wetlands.

#### G. Signs and Fencing of Wetlands.

1. Temporary Markers. The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and is subject to inspection by the director prior to the commencement of permitted activities. The director may require the use of fencing to protect wetlands from disturbance and intrusion. Temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the director may require the applicant to install permanent signs along the boundary of a wetland or buffer.

a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the director:

Protected Wetland Area

Do Not Disturb

Contact the City of Edmonds

Regarding Uses and Restrictions

b. The provisions of subsection (G)(2)(a) of this section may be modified as necessary to assure protection of sensitive features or wildlife.

#### H. Additions to Structures Existing Within Wetlands and/or Wetland Buffers.

Additions to legally constructed structures existing within wetlands or wetland buffers that increase the footprint of development or impervious surfacing shall be permitted consistent with the development standards of this section. Provisions for standard wetland buffers, buffer reductions through enhancement, and wetland buffer averaging require applicants to locate such additions in accordance with the following sequencing:

- 1. Outside of the standard wetland buffer;
- 2. Outside of a wetland buffer reduced through enhancement per subsection (F)(3) of this section;
- 3. Outside of a wetland buffer reduced through buffer averaging per subsection (F)(4) of this section; or

4. Outside of the inner 25 percent of the standard wetland buffer width through the use of both buffer reduction and buffer averaging; or

5. Within buffer areas that:

a. are physically separated from the associated wetland due to public roads, legally established structures, or similar circumstances;

b. are functionally isolated from the associated wetland; and

c. as a result of a and b, above, do not serve to protect the wetland from adverse impacts of development. A critical area report prepared by a qualified professional is required to determine whether subsections a and b are satisfied.

Additions to legally constructed structures existing within wetlands or wetland buffers that cannot be accommodated in accordance with the above sequencing (i.e., additions proposed within a wetland or the inner 25 percent of a standard buffer width) may be permitted at the director's discretion as a variance subject to review by the city hearing examiner and the provisions of ECDC 23.40.210.

I. Exemptions. The director may allow isolated Category 3 or 4 wetlands under 500 square feet in area to be exempt from the provisions of this title. A wetland exemption shall only be granted if a submitted critical areas report, in the form of a critical areas reconnaissance or delineation, provides evidence that all of the following conditions are met:

1. The wetland is under 500 square feet in area;

2. The wetland is a low-quality Category 3 or 4 wetland;

3. The wetland does not provide significant habitat value for wildlife; and

4. Filling of the wetland can maintain equivalent or greater habitat functions and values over existing site conditions.

J. Enhancement of Wetlands and Wetland Buffers. Where this chapter allows development within a wetland or wetland buffer, the director shall condition proposals for development by requiring enhancement measures consistent with ECDC 23.40.050 and the purposes and objectives of this title. Conditions of development approval shall be required to enhance wetland and/or wetland buffers in accordance with best available science and the recommendations of an approved critical areas report and may include without limitation:

a. Planting of native vegetation;

b. Removal and control of nonnative, invasive weed species;

c. Requiring additional building setbacks or modified buffers; and

d. Limiting or reducing the types or densities of particular uses.

In all instances where an applicant cannot demonstrate that standard wetland buffer widths of this section can be accommodated by the proposed development, the applicant shall be required to submit a wetland buffer enhancement plan or a wetland mitigation and buffer enhancement plan as part of a critical areas report. The plan must demonstrate that post-project site conditions will provide equivalent or greater protection of wetland functions and wildlife habitat when compared to a standard wetland buffer and existing site conditions. [Ord. 3527 § 2, 2004].

### **23.90.040 Development standards – Specific habitats.**

A. Endangered, Threatened, and Sensitive Species.

1. No development shall be allowed within a fish and wildlife habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.
2. Whenever activities are proposed adjacent to a fish and wildlife habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical areas report prepared by a qualified professional and approved by the director. Approval for alteration of land adjacent to the fish and wildlife habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.
3. Bald eagle habitat shall be protected pursuant to the Washington State bald eagle protection rules (WAC 232-12-292). Whenever activities are proposed within 800 feet of a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. The director shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington Department of Fish and Wildlife.

**B. Anadromous Fish.**

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
  - a. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;
  - b. An alternative alignment or location for the activity is not feasible;
  - c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
  - d. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical areas report; and
  - e. Any impacts to the functions or values of the fish and wildlife habitat conservation area are mitigated in accordance with an approved critical areas report.
2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
3. Fills, when authorized, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.

C. Retention of Vegetation on Subdividable, Undeveloped Parcels. As a provision of this title, the director shall require retention of a minimum of 30 percent of native vegetation on undeveloped (or redeveloped), subdividable lands zoned as RS-12 or RS-20 per Chapter 16.10 ECDC. This standard for development shall apply to all undeveloped (or redeveloped), subdividable lands zoned RS-12 or RS-20 regardless of the potential for designation as a fish and wildlife habitat conservation area or other critical area. The goal of 30 percent native vegetation can be met through maintaining existing native vegetation, establishing native vegetation, or a combination of both. A vegetation management plan, subject to the approval of the director, is required for approval of the proposed development. This provision for native vegetation retention will provide increased protection of fish and wildlife habitat throughout the Edmonds jurisdiction.

D. Streams. No alteration to a stream or stream buffer shall be permitted unless consistent with the provisions of this title and the specific standards for development outlined below.

1. Standard Stream Buffer Widths. Buffers for streams shall be measured on each side of the stream, from the ordinary high water mark. The following shall be the standard buffer widths for streams based upon the Washington State Department of Natural Resources water typing system and further classification based upon fish presence (fishbearing vs. nonfishbearing) for the Type F streams existing in the city of Edmonds:

- a. Type S: 150 feet;
- b. Type F anadromous fishbearing stream adjacent to reaches with anadromous fish access: 100 feet;
- c. Type F anadromous fishbearing stream adjacent to reaches without anadromous fish access: 75 feet;
- d. Type F nonanadromous fishbearing stream: 75 feet;
- e. Type Np: 50 feet;
- f. Type Ns: 25 feet.

General areas and stream reaches with access for anadromous fish are indicated on the city of Edmonds critical areas inventory. The potential for anadromous fish access shall be confirmed in the field by a qualified biologist as part of critical areas review and determination of standard stream buffer widths.

2. Reduced Stream Buffer Widths. Standard stream buffer widths may be reduced by no more than 50 percent of the standard stream buffer width concomitant to development and implementation of a stream buffer enhancement plan approved by the director. Reduced stream buffer widths shall only be approved by the director if a stream buffer enhancement plan conclusively demonstrates that enhancement of the reduced buffer area will not degrade the quantitative and qualitative functions and values of the buffer area in terms of fish and stream protection and the provision of wildlife habitat. Stream buffer enhancement plans must meet the specific requirements of ECDC 23.40.110, 23.40.120 and 23.40.130 and:

- a. Provide evidence that the reduced buffer, through enhancement, will provide functions and values in terms of stream and wildlife protections equivalent to or greater than a standard buffer without enhancement;

b. The plan documents existing native plant densities and provides for increases in buffer native plant densities to no less than three feet on center for shrubs and eight feet on center for trees;

c. The plan requires monitoring and maintenance to ensure success for a minimum of three years in accordance with ECDC 23.40.130(D) and (E); and

d. The plan specifically documents methodology and provides performance standards for assessing increases in stream buffer functioning as related to:

- i. Water quality protection;
- ii. Provision of wildlife habitat;
- iii. Protection of anadromous fisheries;
- iv. Enhancement of fish habitat; and
- v. Restricting intrusion and disturbance.

3. Stream Buffer Width Averaging. The director may allow modification of a standard or reduced stream buffer width in accordance with an approved critical areas report and the best available science on a case-by-case basis by averaging buffer widths. Only those portions of a stream buffer existing within the project area or subject parcel shall be considered in the total buffer area for buffer averaging. Averaging of buffer widths may only be allowed where a qualified professional demonstrates that:

a. The total area contained in the buffer area, or the total buffer area existing on a subject parcel for a stream extending off-site, after averaging is no less than that which would be contained within the standard buffer;

b. The buffer width at any single location is not reduced to less than 50 percent of the reduced or standard width; and

c. The functions and values of the stream and associated buffer will not be diminished through the use of buffer averaging.

4. Additions to Structures Existing within Stream Buffers. Additions to legally constructed structures existing within stream buffers that increase the footprint of development or impervious surfacing shall be permitted consistent with the development standards of this chapter (ECDC 23.90.030 and this section).

Provisions for standard stream buffers, buffer reductions through enhancement, and stream buffer averaging require applicants to locate such additions in accordance with the following sequencing:

a. Outside of the standard stream buffer;

b. Outside of a stream buffer reduced through enhancement per subsection (D)(2) of this section;

c. Outside of a stream buffer reduced through buffer averaging per subsection (D)(3) of this section; or

d. Outside of the inner 25 percent of the standard stream buffer width through the use of both buffer reduction and buffer averaging.

e. Within buffer areas that:

i. are physically separated from the associated stream due to public roads, legally established structures, or similar circumstances;

ii. are functionally isolated from the associated stream; and

iii. as a result of i and ii, above, do not serve to protect the stream from adverse impacts of development. A critical area report prepared by a qualified professional is required to determine whether subsections i and ii are satisfied.

Additions to legally constructed structures existing within stream buffers that cannot be accommodated in accordance with the above sequencing (i.e., additions proposed within the inner 25 percent of a standard buffer width) may be permitted at the director's discretion as a variance subject to review by the city hearing examiner and the provisions of ECDC 23.40.210.

5. Stream Crossings. Stream crossings may be allowed only if all reasonable construction techniques and best management practices are used to avoid disturbance to the stream bed or bank. Upon completion of construction, the area affected shall be restored to an appropriate grade, replanted with native species and/or otherwise protected according to a stream mitigation and buffer enhancement plan approved by the director, and maintained and monitored per the requirements of ECDC 23.40.110, 23.40.120 and 23.40.130 and providing for buffer enhancement in accordance with the requirements of subsection (D)(2) of this section. In addition, the applicant must demonstrate that best management practices will be used during construction to provide the following:

- a. Fisheries protection, including no interference with fish migration or spawning;
- b. All crossings shall be constructed during summer low flow periods and shall be timed to avoid stream disturbance during periods when stream use is critical to salmonids;
- c. Crossings shall not occur over salmonid spawning areas unless no other possible crossing site exists;
- d. Crossings and culverted portions of the stream shall be minimized to the extent feasible and serve multiple purposes and multiple lots whenever possible;
- e. Roads may cross streams only on previously approved rights-of-way, provided no practical alternative exists and adequate provision is made to protect and/or enhance the stream through appropriate mitigation. Roads shall be designed and located to conform to topography, and maintained to prevent erosion and restriction of the natural movement of ground water as it affects the stream;
- f. Roads and utilities shall be designed in conjunction to minimize the area of disturbance to the stream; and
- g. Roads shall be constructed so as to minimize adverse impacts on the hydrologic quality of the stream or associated habitat to a degree acceptable to the city.

6. Trails. After reviewing the proposed development and technical reports, the director may determine that a pedestrian-only trail may be allowed in a stream buffer; provided, nonimpervious surface materials are used, all appropriate provision is made to protect water quality, and all applicable permit requirements have been met. No motorized vehicles shall be allowed within a stream or its buffer except as required for necessary maintenance or security. Vegetative edges, structural barriers, signs or other measures must be provided wherever necessary to protect streams by limiting vehicular access to designated public use or interpretive areas.

7. Storm Water Management Facilities. Storm water management facilities, limited to outfalls, pipes and conveyance systems, storm water dispersion outfalls and bioswales, may be allowed within stream buffers; provided, that:

- a. No other location is feasible; and
- b. The location and function of such facilities will not degrade the functions or values of the stream or stream buffer.

8. City Discretion in Protection, Enhancement and Preservation of Streams. The city of Edmonds is unique within the state of Washington as a built-out community with streams that have been incorporated within, and often located immediately adjacent to, residential development. This title allows the director full discretion to condition proposals for development on parcels containing, adjacent to, or potentially impacting streams to enhance conditions consistent with ECDC 23.40.050 and the purposes and objectives of this title. Conditions on development shall be required to enhance streams and stream buffers as fish and wildlife habitat conservation areas to provide increased protection of anadromous fisheries and potential fish habitat in accordance with best available science and the recommendations of an approved critical areas report and may include:

- a. Removal of stream bank armoring;
- b. In-stream habitat modification;
- c. Native planting;
- d. Relocation of stream channel portions to create contiguous riparian corridors or wildlife habitat;
- e. Planting of stream bank native vegetation to increase stream shading;
- f. Removal and control of nonnative, invasive weed species;
- g. Requiring additional building setbacks or modified buffers; and
- h. Limiting or reducing the types or densities of particular uses.

The right of discretion in provisioning development in regard to streams is maintained in order to provide for the creation of enhanced conditions over those currently existing around streams in the city of Edmonds. In all instances where an applicant cannot demonstrate that standard stream buffer widths as provided in subsection (D)(1) of this section can be accommodated by project development, the applicant shall be required to submit a stream buffer enhancement plan or a stream mitigation and buffer enhancement plan as part of a critical areas report indicating that postproject site conditions will provide equivalent or greater protection of stream functions and fish habitat over a standard stream buffer and existing site conditions. [~~Ord. 3527 § 2, 2004~~].

# Affidavit of Publication

STATE OF WASHINGTON,  
COUNTY OF SNOHOMISH

} S.S.

**SUMMARY OF ORDINANCE NO. 3935**  
of the City of Edmonds, Washington  
On the 6th day of August, 2013, the City Council of the City of Edmonds, passed Ordinance No. 3935. A summary of the content of said ordinance, consisting of the title, provides as follows:  
**AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO AMEND THE CRITICAL AREAS ORDINANCE, SPECIFICALLY SECTIONS ECDC 23.40.220, 23.40.320, 23.50.020, 23.50.040, AND 23.90.040, TO ALLOW DEVELOPMENT WITHIN LEGALLY ESTABLISHED IMPERVIOUS AREAS AND WITHIN BUFFER AREAS THAT ARE PHYSICALLY SEPARATED AND FUNCTIONALLY ISOLATED FROM AN ASSOCIATED CRITICAL AREA.**  
The full text of this Ordinance will be mailed upon request.  
DATED this 7th day of August, 2013.  
CITY CLERK, SANDRA S. CHASE  
Published: August 11, 2013.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Summary of Ordinance No. 3935

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

August 11, 2013

and that said newspaper was regularly distributed to its subscribers during all of said period.

*Klaudia E. Zeman*

Principal Clerk

Subscribed and sworn to before me this

12th

day of August, 2013

*Diana L. Hendrix*

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

