



Planning & Community Development.

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ADMINISTRATIVE ORDER #000127 012417
CODE INTERPRETATION

CODE SECTION: SMC 20.80.045 Critical Areas Preapplication Meeting

I. **ISSUE:** When is a preapplication meeting required for a project that may be in a critical area or buffer? There are several levels of code that address this issue, including the preapplication meeting section, the critical areas exemptions, the critical areas allowed activities, and the critical areas preapplication meeting section. A required preapplication meeting costs over \$500 and adds at least two weeks to a project timeline.

II. **FINDINGS:**

Shoreline Municipal Code (SMC) Sections:

20.30.080 Preapplication meeting.

A preapplication meeting is required prior to submitting an application for any Type B or Type C action and/or for an application for a project that may impact a critical area or its buffer consistent with SMC 20.80.045. (emphasis added)

20.80.030 Exemptions.

L. **Minor Activities.** Minor activities not mentioned above and determined by the City to have minimal impacts to a critical area;

20.80.040 Allowed activities.

A. **Critical Area Report.** Activities allowed under this section shall have been reviewed and permitted or approved by the City and any other agency with jurisdiction, but do not require submittal of a separate 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 chapter to protect critical areas.

1. **Modifications to Existing Structures within Critical Areas.** Structural modification of, addition to, maintenance, repair, or replacement of legally nonconforming structures consistent with SMC 20.30.280, which do not meet the building setback or buffer requirements for wetlands, fish and wildlife habitat conservation areas, or geologic hazard areas if the modification, addition, replacement or related activity does not increase the existing building footprint of the structure or area of hardscape lying within the critical area or buffer. Within landslide hazard areas additions that add height to a nonconforming structure may only be allowed with review of a critical area report demonstrating that no increased risk of the hazard will occur. Where nonconforming structures are partially located within critical areas or their buffers, additions are allowed with a critical area report delineating the critical area(s) and required buffers showing that the addition is located entirely outside the critical area or buffer;

2. **Demolition.** Demolition of structures located within critical areas or their buffers, excluding demolition of structures necessary to support or stabilize landslide hazard areas, and subject to approval of a stormwater pollution prevention plan consistent with the adopted stormwater manual and clearing limits that will adequately protect the critical area.

20.80.045 Critical areas preapplication meeting.

A. A preapplication meeting, pursuant to SMC 20.30.080, is required prior to submitting an application for development or use of land or prior to starting a development activity or use of the land that may be regulated by the provisions of this chapter unless specifically exempted in SMC 20.80.030.

B. A determination may be provided through the preapplication meeting regarding whether critical area reports are required, and if so what level of detail and what elements may be necessary for the proposed project. This determination does not preclude the Director from requiring additional critical area report information during the review of the project. After a site visit and review of available information for the preapplication meeting, the Director may determine:

1. **No Critical Areas Present.** If the Director's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the Director shall determine that the critical area review is complete and note in the preapplication meeting summary letter the reasons that no further review is required.

2. **Critical Areas Present, But No Impact.** If the Director determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or

values of the critical area, the Director may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:

- a. There will be no alteration of the critical area or buffer;
- b. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this chapter; and
- c. The proposal is consistent with other applicable regulations and standards.

III. CONCLUSIONS

Section 20.80.045 seems to imply that a preapplication meeting is required for anything that is not specifically exempted under 20.80.030. However, if the proposal is allowed without a report under 20.80.040, or would not impact a critical area under 20.30.080, it is not clear that the project would need a preapplication meeting. The list of determinations to be made under 20.80.045.B are often something that can be determined at the counter, without a meeting, especially if the proposal is clearly something that would be allowed under 20.80.040 without a critical areas report. For instance, a site that may or may not be within a stream buffer where the proposal is for an interior remodel only should not need a preapplication meeting to decide that the proposal would not have an impact. It is clearly an allowed activity that does not require a report, however it is not specifically exempted under 20.80.030. Another example is if a known feature exists on a site, but the proposed activity is well beyond the established maximum buffer for that feature, then a determination can be made that the critical area is present, but the project would have no impact.

An unintended consequence of requiring a preapplication meeting for every project that may be near a critical area or buffer, regardless of its lack of impact, leads to unnecessary burden on the applicant, especially since the City now charges a substantial fee for a required preapplication meeting (the code section was written prior to the City's imposing fees for preapplication meetings).

IV. DECISION:

Proposals that are allowable under 20.80.040 and will not impact a critical area or its buffer do not require a preapplication meeting or a critical areas report. These include the following:

1. Modifications to or re-building of existing structures that do not increase the building footprint (unless adding height in a geologic hazard area).

2. Demolition, excluding demolition of structures necessary to support or stabilize landslide hazard areas.

Geologic Hazard Areas

1. Installation of fences as allowed without a building permit.
2. Nonstructural interior remodel and maintenance, if no increase in footprint or height.
3. Erosion hazard area only, up to 1,500 sq. ft. may be cleared without a permit.

Fish & Wildlife Habitat Conservation Areas:

1. Conservation or preservation of natural elements that do not change the structure or functions of the existing habitat conservation area.
2. 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 fish and wildlife habitat conservation area by changing existing topography, water conditions, or water sources.
3. Alteration to a legally constructed structure existing within a buffer that does not increase the footprint of the development or hardscape.
4. Clearing, grading, and the construction of fences and arbors within the buffers for a piped stream segment, if no other critical area or buffer is present.

Wetlands:

1. Conservation or preservation of natural elements that do not change the structure or functions of the existing wetland.
2. 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 fish and wildlife habitat conservation area by changing existing topography, water conditions, or water sources.
3. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer.
4. Enhancement of a wetland through the select removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand labor and handheld equipment unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. Not more than 500 square feet of area may be cleared, as calculated cumulatively over one year, on private property without a permit. All removed plant material shall be taken away from the site and disposed of appropriately. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds or the King County Noxious Weed List must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
5. Alteration to a

legally constructed structure existing within a wetland or wetland buffer that does not increase the footprint of the development or hardscape.

Minor Activities

If a Planner can make a clear determination without a critical area report that the proposal is a minor activity that will not alter or impact a critical area or buffer, no preapplication meeting or critical area report is required. This discretion may only be used if the following criteria are met:

- The planner is certain that the development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of the critical areas ordinance; and
- The proposal is consistent with other applicable regulations and standards.

The Planner must document this determination in a log note attached to the geo record in the permit tracking system. If a permit is under review and subsequent investigation of the property reveals that the project will have an impact or critical areas are present that were not initially reported, the City will require critical areas reporting pursuant to the code. A formal preapplication meeting would not be necessary at this point but any review time, site visits and informational meetings with the applicant will be charged to the applicant as permit review and/or inspection time.

The Notice on Title requirements will still apply regardless of whether the allowed activity requires a preapplication meeting.



Director's Signature

1-25-17

Date