

## Chapter 25.09 - REGULATIONS FOR ENVIRONMENTALLY CRITICAL AREAS

### Sections:

#### 25.09.010 - Purpose of the chapter.

This chapter is based on and implements The City of Seattle Comprehensive Plan, as amended from time to time. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public, and to not create or otherwise establish or designate any particular person, or class, or group of persons who will or should be especially protected or assisted by the terms or provisions of this chapter. This chapter is intended to promote safe, stable, and compatible development that avoids adverse environmental impacts and potential harm on the parcel and to adjacent property, the surrounding neighborhood, and the drainage basin.

(Ord. 122050, § 1, 2006; Ord. 118466 [\[12\]](#), § 2, 1997.)

#### Footnotes:

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**Editor's note**—Ordinance 118466 which enacted Section 25.09.010 expired on April 15, 1997.

#### 25.09.015 - Application of chapter

- A. This Chapter 25.09 applies to any development, as defined in Section 25.09.520, or platting carried out by any person on publicly or privately owned parcels containing an environmentally critical area or buffer, except that:
  - 1. Parcels that are solely within seismic or volcanic hazards areas, as defined in Sections 25.09.020.A.6 and 25.09.020.A.7, and that are not liquefaction-prone areas are subject only to Section 25.09.010, subsections A, B, C and F of Section 25.09.017 and Sections 25.09.020, and 25.09.030; and
  - 2. For parcels, including submerged land, that are in the Shoreline District, as described in Section 23.60A.010, this Chapter 25.09 as incorporated by reference into Section 23.60A.156 applies to development and shoreline modifications, as defined in Chapter 23.60A, uses, platting, and actions described in subsection 25.09.015.C.
- B. This Chapter 25.09 applies to altering vegetation, trees, or habitat carried out by any person in landslide-prone critical areas (including steep slopes), steep slope buffers, riparian corridors, wetlands, and wetland buffers on publicly or privately owned parcels, except for parcels, including submerged land, in the Shoreline District, where such actions shall comply with Section 23.60A.190.
- C. Section 25.09.200.A.4 applies to daylighting pipes and culverts defined in that subsection 25.09.200.A.4.

(Ord. [124105](#), § 37, 2013; Ord. 122738, § 5, 2008; Ord. 122370, § 1, 2007; Ord. 122050 § 1, 2006)

#### 25.09.016 - Environmentally critical areas in the Shoreline District

Environmentally critical areas, as defined in subsection 23.60A.156.C, located within the Shoreline District, as defined in Chapter 23.60A, are regulated pursuant to Section 23.60A.156.

(Ord. [124750](#), § 81, 2015)

#### 25.09.017 - Administration

- A. The Director shall administer and interpret the provisions of this Chapter 25.09, except as specifically provided.
- B. The Director shall determine whether development, platting, or alteration of vegetation, trees, or habitat is subject to this Chapter 25.09. The Director may also consult with other City departments and state and federal agencies as necessary to obtain additional technical and environmental review assistance.
- C. The Director shall review and analyze all applications for all permits or approvals subject to this Chapter 25.09 that are issued by the Seattle Department of Construction and Inspections. Such applications shall be approved only after the Director is satisfied the applications comply with this Chapter 25.09.
- D. Every other City department issuing a permit or other approval for development on parcels containing an environmentally critical area or its buffer or for altering vegetation, trees, or habitat in the areas set out in subsection 25.09.015.B shall require the use of best management practices to prevent impacts to environmentally critical areas and their buffers and to meet the intent of this Chapter 25.09. Departments shall require mitigation to address unavoidable impacts. All such City departments shall maintain records documenting compliance with this subsection 25.09.017.D.
- E. The Director shall identify techniques that are best management practices for actions administered by the Director. The Director may do this by Director's Rule. The directors of other City departments applying these regulations or issuing permits for development in environmentally critical areas or their buffers may identify techniques that are best management practices and may do this by Director's Rule.
- F. The provisions of Section 23.88.020 apply to a decision by the Director as to the meaning, application, or intent of any provision of this Chapter 25.09. The provisions of Section 23.88.020 are the exclusive administrative remedy for any determination by the Director under Chapter 25.09, except as otherwise specifically provided. Other administrative appeal provisions set out in Title 23 do not apply to decisions under this Chapter 25.09, except as specifically provided.

(Ord. [124919](#), § 181, 2015; Ord. [124447](#), § 8, 2014; Ord. 122050 § 1, 2006)

#### 25.09.020 - Environmentally critical areas definitions

The following are environmentally critical areas designated by this Chapter 25.09: geologic hazard areas, steep slope areas, flood-prone areas, wetlands, fish and wildlife habitat conservation areas, and abandoned landfills.

##### A. Geologic Hazard Areas and Steep Slope Areas.

- 1. Geologic hazard areas are liquefaction-prone areas, landslide-prone areas, peat settlement-prone areas, seismic hazards areas and volcanic hazard areas described in subsections 2, 3, 5, 6, and 7. Landslide-prone areas include steep slope areas. Steep slope areas that are regulated for additional erosion hazards are described in subsection 4.
- 2. Liquefaction-prone Areas. Liquefaction-prone areas are areas typically underlain by cohesionless soils of low density, usually in association with a shallow groundwater table, that lose substantial strength during earthquakes.
- 3. Landslide-prone Areas. The following are landslide-prone areas:

- a. Known landslide areas identified by documented history, or areas that have shown significant movement during the last ten thousand (10,000) years or are underlain by mass wastage debris deposited during this period; or
- b. Potential landslide areas:
  - (1) Those areas that are described as potential slide areas in "Seattle Landslide Study" (Shannon & Wilson, 2000 and 2003).
  - (2) Areas with indications of past landslide activity, such as landslide headscarps and sidescarps, hummocky terrain, areas with geologic conditions that can promote earth movement, and areas with signs of potential landsliding, such as springs, groundwater seepage, and bowed or backtilted trees.
  - (3) Areas with topographic expression of runout zones, such as fans and colluvial deposition at the toes of hillsides.
  - (4) Setbacks at the top of very steep slopes or bluffs, depending on soil conditions.
  - (5) Slopes with an incline of forty (40) percent or more within a vertical elevation change of at least ten feet (10').

For the purpose of this definition, a slope is measured by establishing its toe and top and averaging the inclination over at least ten feet (10') of elevation difference.

Also for the purpose of this definition:

- (a) The "toe" of a slope means a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "toe" of a slope is the lower-most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25'); and
  - (b) The "top" of a slope is a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "top" of a slope is the upper-most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25').
- (6) Areas that would be covered under one of subsections (2) to (5), but where the topography has been previously modified through the provision of retaining walls or non-engineered cut and fill operations;
- (7) Any slope area potentially unstable as a result of rapid stream incision or stream bank erosion.
- 4. Steep Slope Areas. Steep slope areas are areas with a slope described in subsection A3b(5) above; provided that when such a slope is on a parcel in a Downtown zone or highrise zone, the area is designated only as a landslide prone area.
- 5. Peat Settlement-prone Areas.
  - a. Peat settlement-prone areas, which consist of Category I and Category II peat settlement-prone areas, are delineated on Maps A1 through A26, Peat Settlement-prone Area Boundaries Maps, codified at the end of this chapter.
  - b. The Director may, at the request of the owner of a parcel larger than 50,000 square feet, provide a parcel-specific delineation of the peat settlement-prone area boundary on that parcel. Where a parcel-specific delineation conflicts with the Peat Settlement-prone Area Boundaries Maps, the parcel-specific delineation shall apply. The parcel-specific delineation is based on the location of the relevant bog or bogs identified in City of Seattle Identified Bogs (Troost 2007) plus a buffer of 50 feet for Category I peat

settlement-prone areas or a buffer of 25 feet for Category II peat settlement-prone areas.

6. Seismic Hazard Areas. In addition to liquefaction-prone areas described in subsection 2 above, seismic hazard areas are the following:
    - a. Areas of the City subject to ground shaking from seismic hazards that are addressed by the Building Code (SMC Title 22).
    - b. The Seattle Fault zone as delineated in Troost et al., 2005, *The geologic map of Seattle, a progress report, U.S. Geological Survey, Open-file report 2005-1252* or as the Director determines is more accurately mapped by the U.S. Geological Survey, as set out in a Director's Rule.
    - c. For tsunamis the waterbody of Lake Washington and for tsunamis and tsunami inundation, the water body and land area as shown in Walsh, et al., 2003, *Tsunami hazard map of the Elliot Bay area, Seattle, Washington: Modeled tsunami inundation from a Seattle Fault earthquake, Washington State Department of Natural Resources and National Oceanic and Atmospheric Administration, Washington Division of Geology and Earth Resources Open File Report 2003-14*, or as the Director determines are more accurately mapped by the National Oceanic and Atmospheric Administration, the U.S. Geological Survey or the Washington State Department of Natural Resources, as set out in a Director's Rule.
    - d. The shoreline and upland areas surrounding Lake Washington are classified as an unknown risk from tsunamis under WAC 365-190-080(4)(b)(iii).
    - e. For seiches, the waterbodies of Elliot Bay, Lake Union and Lake Washington.
    - f. The shoreline and upland areas surrounding the waterbodies in subsection (e) are classified as an unknown risk from seiches under WAC 365-190-080(4)(b)(iii).
  7. Volcanic Hazard Areas. Volcanic hazard areas are areas subject to inundation by lahars or related flooding resulting from volcanic activity on Mount Rainier, as delineated by the U.S. Geological Survey in Hoblitt, et al., 1998, *Volcano Hazards from Mount Rainier, Washington, Revised 1998: U.S. Geological Survey Open-File Report 98-428*, or as the Director determines are more accurately mapped by the U.S. Geological Survey, as set out in a Director's Rule.
- B. Flood-prone areas. Flood-prone areas are those areas that would likely be covered with or carry water as a result of a 100 year flood event, or that would have a one percent or greater chance of being covered with or of carrying water in any given year based on current circumstances or maximum development permitted under existing zoning. This includes areas defined as areas of special flood hazard in Section 25.06.030 and areas mapped by Seattle Public Utilities.
- C. Wetlands. Wetlands are those areas that are inundated or saturated by surface water or ground 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 generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and stormwater 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. Wetlands include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands. Identification of wetlands and delineation of their boundaries pursuant to this Chapter 25.09 shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements.
- D. Fish and wildlife habitat conservation areas. The following are fish and wildlife habitat conservation areas:

1. Areas mapped by the Washington State Department of Fish and Wildlife (WDFW) as urban natural open space habitat areas.
  2. Areas designated by WDFW as priority habitats and species areas, including native eel grass beds, kelp beds, and recreational shellfish areas.
  3. Corridors connecting priority habitats and species areas or habitat areas for species of local importance meeting one of the following criteria:
    - a. WDFW or the Department's species habitat management plan identifies the parcel as part of a corridor connecting habitat areas for priority species or species of local importance;
    - b. the parcel is adjacent to or connects parcels containing priority species or species of local importance and the Director determines that the parcel is part of a wildlife corridor based on information provided by a qualified wildlife biologist or;
    - c. the parcel provides fish passage between fish habitat in Type S, F, Np and Ns waters per WAC 222-16-030 and 222-16-031 upstream and downstream of the parcel, whether that passage is in riparian watercourses, pipes or culverts.
  4. Areas that provide habitat for species of local importance.
  5.
    - a. Riparian corridors, which are the riparian watercourse and the riparian management area. The riparian watercourse is the watercourse of Type F, Np and Ns waters defined in WAC 222-16-030 and 222-16-031 that have fish or wildlife habitat. Water in surface water ditches and stormwater conveyances, pipes, culverts, flow control facilities and water quality facilities are not regulated as riparian watercourses. The riparian management area is the area within 100 feet measured horizontally landward from the top of each bank of the watercourse, or from the ordinary high water mark of the watercourse as surveyed in the field, if the top of the bank cannot be determined. In watercourses with braided channels or alluvial fans, the ordinary high water mark shall be determined so as to include the entire stream feature.
    - b. When a pipe or culvert connecting Type S, F, Np and Ns waters per WAC 222-16-030 and 222-16-031 that have fish habitat downstream and upstream from the pipe or culvert is daylighted, the waters formerly in the pipe or culvert will be regulated as a riparian watercourse, and the area adjacent to that watercourse will be regulated as a riparian management area, as defined in subsection 25.09.020.D.5. This subsection 25.09.020.D.5.b does not apply when the pipe or culvert is removed to provide a publicly-owned facility designed primarily for water quality treatment, flow control or stormwater conveyance.
  6. Priority habitat areas as regulated in Sections 23.60A.156 and 23.60A.160 and setbacks as regulated in Sections 23.60A.156 and 23.60A.167, except that in the UI and UM shoreline environments the portion of the setback that is an environmental critical area, as regulated in Sections 23.60A.156 and 23.60A.167, is the setback measured from the ordinary high water mark landward 15 feet.
- E. Abandoned Landfills. Abandoned landfills include those abandoned solid waste landfills identified by the Seattle-King County Health Department in their 1986 Abandoned Landfill Toxicity/Hazard Assessment Project, additional sites identified by public or historical research, and areas within one thousand feet (1,000') of methane-producing landfills.

(Ord. [124750](#), § 82, 2015; Ord. [124447](#), § 9, 2014; Ord. [124105](#), § 38, 2013; Ord. 122738, § 6, 2008; Ord. 122370, § 2, 2007; Ord. 122050 § 1, 2006; Ord. 118794 § 61, 1997; Ord. 117945 § 1, 1995; Ord. 117789 § 16, 1995; Ord. 116253 § 1(part), 1992.)

25.09.030 - Location of environmentally critical areas and buffers

- A. Environmentally critical areas are defined in Section 25.09.020, and buffers are described in Sections 25.09.160 and 25.09.180. Environmentally critical areas are mapped whenever possible. These maps are advisory except for the maps adopted as designations for geologically hazardous areas in subsections 25.09.020.A.5, 25.09.020.A.6, and 25.09.020.A.7, the FEMA maps showing areas of special flood hazard defined in subsection 25.06.030.B, and areas mapped or designated by the Washington State Department of Fish and Wildlife (WDFW) in subsections 25.09.020.D.1 and 25.09.020.D.2. The Director may update or amend the maps by Director's Rule.
- B. Determination of critical area or buffer location
  - 1. The Director shall determine whether a parcel contains an environmentally critical area or buffer before other provisions of this Chapter 25.09 are applied to a development proposal.
  - 2. If an application for development is proposed on a site that the Director believes contains a critical area or critical area buffer, an applicant may request a determination that a specific parcel of property does not contain a critical area or critical area buffer or that the critical area or buffer is located differently, including whether a critical area map should be changed, by applying for an exemption pursuant to subsection 25.09.045.D.1. In making the exemption determination the Director may consider the factors set out in subsection 25.09.030.B.4.
  - 3. If no application for development is proposed, a request for a formal determination whether a specific parcel contains a critical area or critical area buffer or of the location of a critical area or critical area buffer, including whether a critical area map should be amended, shall be made by applying for an interpretation pursuant to the provisions of Section 23.88.020. Interpretation decisions are not binding on subsequent applications for development if the facts supporting the interpretation or the designation criteria for a critical area or critical area buffer have changed. In making the interpretation the Director may consider the factors set out in subsection 25.09.030.B.4.
  - 4. Factors considered. In determining whether a parcel contains an environmentally critical area or buffer, the Director may consider the environmentally critical areas maps, site surveys, topographic maps, technical environmental analysis, and any other information the Director determines necessary. In determining whether development is subject to regulation under Section 25.09.110, the Director may consider only whether the development will occur within an area delineated pursuant to subsection 25.09.020. A.5.

(Ord. [124447](#), § 10, 2014; Ord. 122738, § 7, 2008; Ord. 122370, § 3, 2007; Ord. 122050 § 1, 2006)

#### 25.09.040 - Permits and approvals required

- A. Prior to undertaking development or platting on a parcel containing an environmentally critical area or buffer, the applicant shall (1) submit an application complying with the provisions of Section 25.09.330, unless the applicant applies for an approval under the provisions of Section 25.09.045, 25.09.055, or 25.09.320, and (2) obtain the Director's approval of the application. An application that includes a request for an exemption under subsection 25.09.045.D, or Sections 25.09.055 or 25.09.320, shall include a request for modification to the submittal requirements of Section 25.09.330.
- B. Prior to undertaking actions under Section 25.09.045, 25.09.055, or subsection 25.09.200.A.4, the applicant shall obtain the Director's approval of the application under the applicable section. The applicant shall also obtain approval of a modification to the submittal requirements of Section 25.09.330 as part of compliance with subsection 25.09.045.D or Sections 25.09.055 or 25.09.320.
- C. Prior to altering vegetation, trees, or habitat protected by this Chapter 25.09 the person responsible shall comply with the provisions of Section 25.09.320, unless that person complies with Section 25.09.045 or 25.09.055.

(Ord. [124447](#), § 11, 2014; Ord. 122050 § 1, 2006; Ord. 116976 § 2, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.045 - Exemptions

- A.
  - 1. When the Director determines that criteria in subsections D to J below are met, those activities are exempt from the provisions of this chapter, except Sections 25.09.017 and .030 B and as otherwise provided in this section.
  - 2. An application for an exemption may be made only as a component of a specific proposed development.
  - 3.
    - a. The applicant for an exemption shall provide all information requested by the Director and demonstrate that the work qualifies for the exemption. The Director shall determine whether work is exempt and may impose conditions on the work to protect environmentally critical areas and buffers or other property.
    - b. City agencies taking the action under any subsection of this section and the public agency taking the action under subsection J do not need to make an application to the Director provided that if no application is made, they shall comply with all provisions of this Section 25.09.045, make all determinations required to be made by the Director, including required conditions, and shall maintain records documenting compliance with all provisions.
- B. All exempt activities shall be undertaken using best management practices; the applicant shall maintain records documenting compliance with this subsection B.
- C. The enforcement provisions of this chapter apply to all activities exempted under this section. The Director's determination that a violation exists is not limited by determinations made by other City agencies or public agencies under subsection A3b, above.
- D. Development not within an environmentally critical area
  - 1. Development on property the Director determines is not within an environmentally critical area or buffer is exempt from the provisions of this Chapter 25.09.
  - 2. Development that does not temporarily or permanently encroach within, alter, or increase the impact to the environmentally critical area or buffer on the parcel where the development occurs is exempt from the provisions of this Chapter 25.09; if existing development that encroaches within or impacts the environmentally critical area or buffer is removed, then new development that encroaches within, alters or impacts the environmentally critical area or buffer is not exempt.
- E. Work directly related to ending a condition that (1) is an immediate threat to the public health, safety and welfare, or creates an immediate risk of damage to public or private property and (2) requires remedial or preventive action in a timeframe too short to allow compliance with the application provisions of this chapter is exempt from those provisions, provided that the work is the minimum work necessary to end the condition and the work is consistent with the development standards of this chapter to the extent practicable. Once the Director determines that the condition no longer meets these criteria, all work is subject to the provisions of this chapter, including but not limited to its application requirements, its development standards, and any requirements for technical reports and reviews for work that was exempt at the time it was performed.
- F. Maintenance, repair, renovation, or structural alteration of an existing structure that does not increase the impact to, or encroach further within, or further alter an environmentally critical area or buffer is exempt from the provisions of this chapter.
- G. Rebuilding or replacing structures that are destroyed by an act of nature is exempt from the provisions of this Chapter 25.09, provided that action toward the rebuilding or replacement is commenced within one year of the act of nature, that the rebuilding or replacement is diligently pursued, and that the new construction or related activity does not further encroach into, or increase the impact to, or further alter

an environmentally critical area or buffer and complies with applicable requirements of Chapter 25.06, Floodplain Development.

- H. 1. The activities identified in subsection 25.09.045.H.3 below are exempt from the provisions of this Chapter 25.09 if the applicant demonstrates:
  - a. The work is not a prerequisite to other development;
  - b. No practicable alternative to the work with less impact on the environmentally critical area or buffer exists; and
  - c. The work does not pose an unreasonable threat to the public health, safety or welfare, or to the environment, on or off the property.
- 2. The Director's decision shall:
  - a. include the approved location and limits of the work; and
  - b. require specific mitigation measures for impacts to all environmentally critical areas and their buffers before, during, and after construction; and
  - c. require special inspection at the Director's discretion.
- 3. The provisions of this subsection 25.09.045.H apply to the following activities:
  - a. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less only when required by a governmental agency;
  - b. Relocation of natural gas, cable communications, gas, telephone facilities, and public utility lines, pipes, mains, equipment or appurtenances only when required by a governmental agency;
  - c. Installation or construction in improved public road rights-of-way, and replacement, operation or alteration, of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;
  - d. Installation or construction in improved public road rights-of-way, and replacement, operation, repair or alteration of all natural gas, cable communications, telephone facilities, and public utility lines, pipes, mains, equipment or appurtenances;
  - e. Public or private projects designed exclusively to enhance ecological function in the Shoreline District or to enhance riparian corridors, and wetlands and their buffers, including stormwater-related functions, that require either a Hydraulic Project Approval from the Washington Department of Fish and Wildlife or a Section 404 permit under the federal Clean Water Act from the United States Army Corps of Engineers, or any project funded by the Aquatic Habitat Matching Grant program, established by City Council Resolution 30719, and
  - f. Public projects if the intrusion into the environmentally critical area or buffer benefits the public, such as trails providing access to a creek or wetland area, when located and designed to keep environmental disturbance to a minimum. The applicant shall protect vegetation and trees pursuant to a tree and vegetation plan consistent with best management practices. The plan shall be prepared by a qualified expert with experience related to the type of environmentally critical area or buffer where work will occur. In landslide-prone areas the plan shall also be approved by a geotechnical engineer or geologist licensed in the State of Washington with experience in analyzing geological hazards related to slope stability and vegetation removal on steep slopes.
- I. Normal and routine operation, maintenance, remodeling, repair, and removal of existing public facilities and utilities is exempt from the provisions of this chapter when these activities do not result in substantial disturbance of environmentally critical areas or buffers.
- J. Normal and routine (a) pruning, (b) tree and vegetation maintenance and management, and (c) revegetation are exempt from the provisions of this chapter when they do not result in substantial



disturbance of environmentally critical areas or buffers and when they are carried out in parks, public utility right of ways, and publicly owned open spaces by the public agencies, including City agencies, that are responsible for them.

- K. Site investigative work. Minor site investigative work, such as surveys, soil logs, percolation tests, and other related activities, if such activities do not exceed grading that is exempt under the Grading Code, Chapter 22.170. In every case, impacts to the environmentally critical area and buffer shall be minimized, and disturbed areas shall be immediately restored.

(Ord. [124447](#), § 12, 2014; Ord. [124105](#), § 39, 2013; Ord. 122050 § 1, 2006)

#### 25.09.050 - City projects.

"City project" means all work described in Section 25.09.015 that is undertaken by a City agency. A City project shall comply with all provisions of this chapter unless the project is exempt under Section 25.09.045.

(Ord. 122050 § 1, 2006)

#### 25.09.055 - Small project waiver

- A. The Director may approve new accessory structures or additions to existing structures in the environmentally critical areas and buffers listed in subsection 25.09.055.A.2, if no construction occurs over or in a water course, water body, or wetland, and if the applicant demonstrates the proposal meets the following criteria:

1. The new accessory structure or addition to an existing structure is on a lot that has been in existence as a legal building site prior to October 31, 1992.
2. The development does not exceed 150 square feet in riparian management areas or in wetland buffers, 300 square feet in steep slope areas or buffers, or 750 square feet in landslide-prone (except steep slope) areas, all calculated cumulatively from October 31, 1992. When the new accessory structure or addition to an existing structure is on a lot that is or has been held in common ownership with a contiguous lot and the lots are or have been used for a single principal use or for a principal use and accessory use, the limitation applies to the entire site.
3. It is not possible to build the accessory structure or addition to an existing structure for the intended purpose out of the environmentally critical area or buffer.
4. The location of the accessory structure or addition to an existing structure keeps impact on the environmentally critical area and buffer to a minimum.
5. In landslide-prone areas the Director may require a soils report prepared by a qualified geotechnical engineer or geologist licensed by the State of Washington demonstrates that it is safe to construct the new accessory structure or the addition to an existing structure.
6. In steep slope areas or buffers, and in all other landslide-prone areas, the new accessory structure or addition to an existing structure subject to waiver under this Section 25.09.055 shall not include retaining walls or drainage features.

- B. Director's decision

1. The Director shall require the use of fencing with a highly durable protective barrier during the construction to protect the remainder of the environmentally critical area and/or buffer.
2. The Director shall require planting native vegetation in an area equal in size to the area of any native vegetation in a riparian corridor, wetland buffer, steep slope, or steep slope buffer that is removed or adversely impacted by the development. Any invasive species shall be removed from the planting area. The planting area shall be on site and, whenever possible, in the same

environmentally critical area or buffer. When this is not possible, the Director shall authorize all or a portion of the planting to be outside the environmentally critical area or buffer or on another parcel, when the Director determines this will mitigate the impact.

3. The Director shall require additional measures to protect the remainder of the environmentally critical area and/or buffer.

(Ord. [124447](#), § 13, 2014; Ord. 122738, § 8, 2008; Ord. 122050 § 1, 2006)

#### 25.09.060 - General development standards

The following general development standards apply to development on parcels containing environmentally critical areas or their buffers, except as specifically provided in this Chapter 25.09:

- A. Any required nondisturbance area shall be legibly shown and described on the site plan, and a covenant shall be required as set out in Section 25.09.335.
- B. The project shall avoid adverse impacts from development on environmentally critical areas and buffers, and the Director shall restrict developmental coverage and construction activity areas to the most environmentally suitable, naturally stable, and least sensitive portion of the site in order to protect the ecological functions and values of wetlands and fish and wildlife habitat areas, prevent erosion from development on steep slope areas, and protect the public health, safety and welfare in landslide-prone, liquefaction-prone, and flood-prone areas. Grading activities and impervious surfaces that may impact environmentally critical areas or buffers shall be kept to a minimum and limited to areas approved by the Director.
- C. Driveways and utility corridors that may impact environmentally critical areas or buffers shall be kept to a minimum through the use of common access drives and corridors where feasible. Roads, walkways, and parking areas should be designed parallel to topographic contours with consideration given to maintaining consolidated areas of natural topography and vegetation. Access shall be located in a way that keeps impacts to environmentally critical areas and buffers to a minimum.
- D. All buffers and designated non-disturbance areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and to protect environmentally critical areas.
- E. All site clearing on the lot that may impact environmentally critical areas or buffers shall be carried out in stages just prior to construction, and cleared areas shall be kept to the minimum for construction. Revegetation shall occur after the particular phase of construction is completed. When required by the Director, a tree and revegetation plan shall establish a staged vegetation removal and replacement program that keeps the amount of exposed soil during and after construction to a minimum. In drier months, temporary surface irrigation or temporary installation of intermediate plantings may be required until weather or seasonal conditions permit installation of the permanent plantings.
- F. Construction activity on the lot that may impact environmentally critical areas or buffers shall adhere to a prepared schedule and mitigation plan approved by the Director prior to the start of construction. This schedule and mitigation plan shall include, but not be limited to, a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, work sequencing, and shall include the design, implementation, maintenance, and monitoring of mitigation requirements to prevent erosion, siltation, and destruction of vegetation.
- G. All grading in environmentally critical areas shall be completed or stabilized by October 31st of each year unless the applicant demonstrates to the satisfaction of the Director based on approved technical analysis that no environmental harm or safety problems would result from grading between October 31st and April 1st. This provision does not apply to grading in liquefaction-prone areas and abandoned landfills environmentally critical areas unless the parcel contains another environmentally critical area.
- H. Best management practices shall be used for all construction activity on parcels with or adjacent to environmentally critical areas or buffers to prevent sediment and other pollutants from entering the riparian corridor watercourses or other fish and wildlife habitat conservation areas on or off the

property. Best management practices include, but are not limited to, installation of siltation barriers, diversion measures, slope drains, and structural, vegetative stabilization techniques and other methods prescribed in Chapters 22.800 through 22.808, the Stormwater Code.

- I. The Director may require an erosion control plan and a tree and revegetation plan when erosion potential is severe. The erosion control plan shall be consistent with best management practices, and best management practices shall be followed in implementing it. The tree and revegetation plan shall be prepared by a qualified professional with landscaping, plant ecology and botany education and experience. All revegetation shall consist of native vegetation.
- J. The site, including developmental coverage and construction activity areas, shall be managed in a manner sufficient to control stormwater and prevent erosion during construction, and shall be revegetated to promote stormwater control and prevent erosion after construction, consistent with Chapters 22.800 through 22.808, the Stormwater Code.
- K. When calculating detention requirements, all disturbed areas on the site shall be calculated as developmental coverage, including revegetated areas, excluding enhanced or restored areas as approved by the Director.
- L. Pesticides and fertilizers shall not be applied within (50) feet of a riparian corridor watercourse, wetland or shoreline except as allowed by the Director for the following circumstances and when allowed pesticide applications will be done by a licensed applicator:
  - 1. The state or local Health Department recommends or directs their use to address a threat to public health, or
  - 2. A county, state, or federal agency with jurisdiction directs their use for control of a state listed noxious weed or plant pests covered by the Washington State Department of Agriculture plant pest program, and when non-chemical alternatives have been evaluated, or
  - 3. When the Director determines the applicant has demonstrated that the use will have no adverse impact to fish and wildlife. Such a determination may be in the form of concurring that the applicant has developed best management practices or an integrated pest management plan consistent with standards developed by the Director, or
  - 4. When the Director has determined that use of a pesticide to control invasive plants would have less overall environmental impact than other control strategies, or
  - 5. When the Director determines there is a serious threat to public safety, health, or the environment.
- M. The Director may require a development proposal's design to account for a one hundred (100) year seismic and one hundred (100) year flood event, unless a design for a greater event is required by other applicable codes.
- N. The Director may require additional construction practices and methods and requirements, including, but not limited to best management practices as outlined in federal, state and Seattle manuals, and limitations on construction equipment permitted on the site, to protect environmentally critical areas and buffers on and off the property.
- O. No provision of this chapter shall be construed to require putting new or existing power lines underground.

(Ord. [124447](#), § 14, 2014; Ord. 123106, § 8, 2009; Ord. 122050 § 1, 2006; Ord. 121276 § 37, 2003; Ord. 116976 § 3, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.080 - Landslide-prone critical areas.

- A. This section applies to all parcels in or containing a landslide-prone critical area.
- B. Site.

1. Complete stabilization of all portions of a site that are disturbed or affected by the proposed development, including all developmental coverage and construction activity areas, is required. Complete stabilization of all portions of a site refers to the process and actions necessary to stabilize proposed site improvements, and all on-site areas and adjacent properties, including adjacent public and private rights-of-way, that are disturbed or affected.
  2. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm, and to provide safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to provide site stability may be required by the Director. This may include imposing conditions concerning the type and method of construction that reflect the specific constraints of the site.
  3. Removal of, clearing, or any action detrimental to trees or vegetation in landslide prone critical areas is prohibited, except as provided in this section and Section 25.09.320.
- C. Third-Party Review. In addition to requiring the information provided pursuant to Section 25.09.330 and to Director's Rules, the Director may require third-party review when the professional opinions of the applicant's representative and the Department's reviewers cannot be reconciled. Third-party review requires the applicant's geotechnical and/or additional technical studies to be reviewed by an independent third party, paid for by the applicant but hired by the Director. Third-party review shall be conducted by a qualified engineering consultant.
- D. Bonds and Insurance. The Director may require adequate bonds and/or insurance to cover potential claims for property damage that may arise from or be related to excavation or fill within a landslide-prone area when the depth of the proposed excavation exceeds four feet (4') and the bottom of the proposed excavation is below the one hundred percent (100%) slope line (forty-five (45) degrees from a horizontal line) from the property line. The Director may require such bonds and insurance in other circumstances where the Director determines that there is a potential for significant harm to an environmentally critical area or buffer during the construction process.
- E. Permit Renewals. In addition to complying with the permit renewal standards in Chapter 23.76, applications for permit renewal shall comply with the following standards.
1. The Director may renew a permit for development that is in conformance with applicable regulations in effect at the time the renewal is sought.
  2. An applicant seeking to renew a permit for new development in a landslide-prone area must submit a letter of certification from the current project geotechnical engineer of record as described in subsection G2. If such a letter of certification is not submitted, the permit shall not be renewed.
  3. The Director may renew a permit for development in a landslide-prone area if, after considering the information submitted in conformance with subsections G, he or she determines that there is no increased risk of damage to the proposed development, to neighboring properties, or to the drainage basin. In making such a determination the Director may impose new conditions or require the submittal of revised plans.
  4. An applicant for renewal also must demonstrate that any required bond or insurance will be in effect during the renewal period, and that the amount of such bond or insurance still is appropriate. The Director may require a bond or insurance as a condition of renewal even if such bond or insurance was not required previously.
- F. Issued permits in landslide-prone areas. If the Director has reasonable grounds to believe that an emergency exists because significant changes in conditions at a project site or in the surrounding area may have occurred since a permit was issued, increasing the risk of damage to the proposed development, to neighboring properties, or to the drainage basin, the Director may by letter or other reasonable means of notification suspend the permit until the applicant has submitted a letter of certification as described in subsection G2 and has satisfied the standards of that section.
- G. Letter of Certification.

1. The Director may require a letter of certification based on such factors as the presence of known slides, indications of changed conditions at the site or the surrounding area, or other indications of unstable soils.
2. The letter of certification shall be from the current project geotechnical engineer of record stating that a geotechnical engineer has inspected the site and area surrounding the proposed development within the sixty (60) days preceding submittal of the letter; and that:
  - a. In the project geotechnical engineer's professional opinion no significant changes in conditions at the site or surrounding area have occurred that render invalid or out-of-date the analysis and recommendations contained in the technical reports and other application materials previously submitted to the Department as part of the application for the permit; or that
  - b. In the project geotechnical engineer's professional opinion changes in conditions at the site or surrounding area have occurred that require revision to project criteria, and that in the project geotechnical engineer's professional opinion all technical reports and any necessary revised drawings that account for the changed conditions have been prepared and submitted.

(Ord. 122050 § 1, 2006; Ord. 118672 § 36, 1997; Ord. 116976 § 4, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.100 - Development standards for liquefaction-prone areas.

- A. The general development standards set out in SMC 25.09.060 do not apply to liquefaction prone areas.
- B. Soils engineering studies may be required for development in liquefaction-prone areas to determine the physical properties of the surficial soils, especially the thickness of unconsolidated deposits, and their liquefaction potential, as set out in Title 22, Subtitle I.
- C. If it is determined that the site is subject to liquefaction, mitigation measures may be imposed pursuant to Title 22, Subtitle I, in addition to other applicable codes or regulations pertaining to development in liquefaction-prone areas.

(Ord. 122050 § 1, 2006; Ord. 116253 § 1(part), 1992)

#### 25.09.110 - Development standards for peat settlement-prone areas.

- A. The general development standards set out in Section 25.09.060 do not apply to peat settlement-prone areas.
- B. A geotechnical study detailing the location of the annual high static groundwater level is required for development in peat settlement-prone areas that involve excavation more than thirty (30) inches below the existing grade.
- C. No development shall occur within a peat settlement-prone area below the annual high static groundwater level except to the minimum extent the Director deems necessary to allow the following:
  1. Structural components required under Title 22, Subtitle I and IA, the Building Code and Residential Code;
  2. Utility lines, including but not limited to drainage and sanitary side sewers and stormwater conveyance facilities, but excluding groundwater collection systems;
  3. Geotechnical testing;

4. Maintenance, repair, renovation, or structural alteration of an existing structure if that activity, even though it might involve construction activity below the annual high static groundwater level, does not increase the extent of the structure below the annual high static groundwater level;
  5. Aquatic habitat restoration;
  6. Infiltration facilities or other development designed primarily to encourage recharge or infiltration of water to the groundwater;
  7. Replacement of contaminated soils with other soils or fills when the applicant demonstrates to the satisfaction of the Director that the removal will not increase the likelihood of settlement on off-site parcels;
  8. Public utility facilities designed to provide drinking water, control flooding or protect against sanitary or combined sewer overflow when the applicant demonstrates to the satisfaction of the Director that the facilities have been designed to avoid or minimize to the maximum extent practicable impacts to the groundwater regime; or
  9. Elevator pits necessary to meet accessibility standards required by City law.
- D. Groundwater collection systems are prohibited in peat settlement-prone area unless otherwise required by law.
  - E. Development in a Category I peat settlement-prone area shall not increase the total impervious surface on the site unless the Director approves using an infiltration facility or soil amendments that offset the lost infiltration function. The Director may waive this requirement to the extent offsetting the lost infiltration function would adversely affect a landslide-prone area or steep slope area.
  - F. For construction activity in a peat settlement-prone area, the Director may require additional construction practices, methods, and restrictions that limit temporary groundwater de-watering.
  - G. In a peat settlement-prone area, land-disturbing activities with the potential to modify the groundwater regime are limited to the minimum reasonably necessary for development. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems and adverse impacts to off-site parcels.
  - H. In addition to requiring the information provided pursuant to Section 25.09.330 and to Director's Rules, the Director may require third-party review when the professional opinions of the applicant's representative and the Department's reviewers cannot be reconciled. Third-party review requires the applicant's geotechnical and/or additional technical studies to be reviewed by an independent third party, paid for by the applicant but hired by the Director. Third-party review shall be conducted by a qualified engineering consultant.
  - I. The Director may waive compliance with some or all of the requirements of subsections B - G for a project in a Category II peat settlement-prone area to the extent the applicant demonstrates to the satisfaction of the Director that the project has been designed to avoid adverse impacts to off-site parcels from peat settlement. Such impacts include but are not limited to any adverse, off-site effect resulting from temporary dewatering during construction, groundwater inflow due to normal operation and maintenance of underground structures, groundwater inflow due to potential future leaks that could occur in underground structures, and reduced impervious surface. Projects qualifying for a waiver under this subsection may include but are not limited to the following:
    1. Projects involving concurrent removal of all peat contained in an entire peat settlement-prone area;
    2. Concurrent development or redevelopment of the entire peat settlement-prone area that is designed to minimize modification of the groundwater table and avoid impacts of future settlement through design of new structures; or
    3. Projects that are designed to minimize modification of the groundwater regime and that avoid potential adverse, off-site settlement impacts by retrofitting existing structures on off-site parcels within the entire peat settlement-prone area.

- J. Standards for height and floor area ratio may be modified on lots containing a peat settlement-prone environmentally critical area as provided in 23.47A.012 and 23.47A.013.
- K. Nothing in this section (including but not limited to subsection I) limits the authority of the Director pursuant to other applicable codes or regulations (including but not limited to Title 22, Subtitles I and IA, the Building Code and Residential Code) to require additional studies or impose additional conditions to address project-related risks arising in peat settlement-prone areas.

(Ord. 122738, § 9, 2008)

#### 25.09.120 - Development standards for flood-prone areas

All development shall meet the applicable requirements of Chapter 25.06, Seattle Floodplain Development Ordinance; Chapter 22.100, Seattle Building Code; Chapter 22.150, Seattle Residential Code; Chapter 22.170, Seattle Grading Code; and Chapter 22.800, Seattle Stormwater Code.

(Ord. [124447](#), § 15, 2014; Ord. 123106, § 9, 2009; Ord. 122050, § 1, 2006; Ord. 118396, § 195, 1996; Ord. 116253, § 1(part), 1992)

#### 25.09.160 - Development standards for wetlands

- A. Wetlands are rated according to the Washington State Wetland Rating System for Western Washington (Ecology Publication #04-06-25). Illegal grading, filling, draining, or other development will not result in a change to that wetland's rating. Wetlands constructed for mitigation or replacement purposes are subject to the provisions of this Chapter 25.09.
- B. Impacts to wetlands
  - 1. Development, including but not limited to grading, filling, or draining, is prohibited within or over:
    - a. Category I, II or III wetlands greater than 100 square feet;
    - b. Category IV wetlands 1,000 square feet or greater;
    - c. A wetland of any category or size that is part of a larger wetland system or abuts any Type S, F, Np and Ns water per WAC 222-16-030 and 031.
  - 2. Development may occur within or over Category IV wetlands less than 1,000 square feet, other than those wetlands described in subsection 25.09.160.B.1.c, in accordance with subsection 25.09.160.C.3.
  - 3. When development is authorized on a parcel containing a wetland:
    - a. Development shall comply with subsection 22.805.020.G and all other applicable sections of the Storm Water Code; and
    - b. Direct lighting shall be directed away from the wetland and its buffer.
  - 4. In a wetland of any category or size, any action detrimental to habitat, trees or vegetation, including but not limited to clearing or removal, is prohibited, except as provided in Sections 23.60A.190, 25.09.045, 25.09.300, and 25.09.320.
- C. Wetland buffers and mitigation
  - 1. Establishment of buffers.
    - a. The wetland buffer is measured horizontally from the edge of the wetland.
    - b. Wetlands have the following buffers:

Category I and II wetlands over 100 square feet in total size or of any size with the characteristics described in subsection 25.09.160.B.1.c above	100 feet  110 feet for moderate level habitat function  200 feet for high level of habitat function
Category III wetlands over 100 square feet in total size or of any size with the characteristics described in subsection 25.09.160.B.1.c above	60 feet  85 feet for moderate or greater level habitat function
Category IV wetlands 1000 square feet or more in total size or of any size with the characteristics described in subsection 25.09.160.B.1.c above	50 feet
Category IV wetlands under 1000 square feet in total size that do not have the characteristics described in subsection 25.09.160.B.1.c above	No buffer. Use mitigation under subsection 25.09.160.C.3.

A wetland with a moderate level of function is one that scores 20 to 28 points for habitat function when rated according to Washington State Ecology publication #04-06-025. A wetland with a high level of function for habitat is one that scores of 29 to 36 points for habitat function when rated according to Washington State Ecology publication #04-06-025.

- c. Wetlands constructed in upland areas or non-wetland areas by any person for stormwater control, biofiltration or aesthetic purposes are not subject to the wetland buffer requirements of this Chapter. Maintenance activities are not restricted in these types of wetlands.
2. Development is prohibited in wetland buffers, except as approved by the Director under subsection 25.09.160.D.
3. The Director may authorize development in a Category IV wetland under 1,000 square feet that does not have the characteristics described in subsection 25.09.160.B.1.c above, when the Director finds that one of the following measures, which must occur on site, will mitigate wetland function lost by development:
  - a. Construct a wetland of equal function to the lost wetland function.
  - b. Plant an area of native vegetation equal or greater in size to the area of the developed wetland, and remove invasive species in the area to be planted.
  - c. Construct a bioengineered/infiltration facility, such as a bioretention cell or bioretention plant, that replicates the hydrologic and/or water quality benefit of the developed wetland. This



facility shall be designed according to the requirements of Chapters 22.800 through 22.808, Stormwater Code and associated Director's Rules.

- d. Construct a green roof or roof garden that replicates the hydrologic and/or water quality benefit of the developed wetland. These facilities shall be designed according to the requirements of Chapters 22.800 through 22.808, Stormwater Code and associated Director's Rules.

4. Buffer vegetation

- a. In the wetland buffer, any action detrimental to habitat, trees or vegetation, including but not limited to clearing or removal, is prohibited, except as provided in subsection 25.09.160.D and in Sections 23.60A.190, 25.09.055, 25.09.300, and 25.09.320.
- b. Invasive plants and noxious weeds may be removed by hand. No machines or chemical removal shall be permitted without the Director's approval.

D. Buffer Averaging and Buffer Reductions.

1. Buffer Width Averaging. The Director may modify the standard wetland buffer width by averaging buffer widths when a qualified wetlands professional demonstrates to the Director's satisfaction that:
  - a. It will not reduce wetland functions or values;
  - b. The total area contained in the buffer area after averaging is no less than that which would be contained within the buffer required in subsection C above; and
  - c. The buffer width is not reduced to less than the following:

Category IV wetlands	35 feet
Category III wetlands with a high level of function for habitat	60 feet
All other Category III wetlands	40 feet
Category I and II wetlands with a high level of function for habitat	140 feet
All other Category I and II wetlands	75 feet

A high level of function for habitat shall be determined as set out in Subsection C1 above.

2. Buffer Reductions.

- a. The Director may reduce a Category IV wetland buffer when the applicant qualifies for a variance by demonstrating that:
  - (1) the lot where the buffer is located was in existence before October 31, 1992;
  - (2) the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full buffer; and

- (3) either the site does not meet the criteria for buffer averaging under subsection D1 or such averaging does not relieve the hardship that was found under subsection 25.09.280 B2.
  - b. If any buffer reduction is authorized by a variance under subsection D2a, the Director shall
    - (1) require the Category IV wetland to be restored on site in a manner that improves water quality, hydrology and habitat functions. Restoration must comply with subsections F and G below and with the Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 1994 (#94-29); and
    - (2) determine the amount of wetland buffer to reduce by applying the buffer averaging to the extent possible under subsection D1 and reducing the yards and setbacks before reducing the wetland buffer, unless reducing the yards or setbacks is injurious to safety. The wetland buffer shall be reduced by the minimum amount to mitigate the hardship, but never to less than thirty five feet (35'); and
    - (3) impose additional conditions on the location and other features of a proposed development as necessary to carry out the purpose of this chapter and to mitigate the loss or reduction of the yard, setback or buffer.
  - c. The process and procedure for a variance under this subsection D2 shall be as prescribed for Type II land use decisions in Chapter 23.76.
- E. Avoidance and mitigation standards
  1. If an exception to the standards of this Section 25.09.160 is approved under Section 25.09.300, the Director shall require application of the following standards for wetland mitigation in following order of priority:
    - a. avoid the impact to the extent practicable by not taking all or part of an action;
    - b. keep the impact to a minimum by limiting the degree or magnitude of the action and its implementation, and by taking affirmative actions to mitigate the impact over time; and
    - c. mitigate unavoidable impacts to the designated uses of a wetland by replacement, enhancement, or other approved compensation methods.
  2. Mitigation for grading, filling, or draining wetlands shall achieve the equivalent or better biologic functions of the existing wetland. Mitigation plans shall be consistent with Washington State Department of Ecology Publication #06-06-011b, Wetland Mitigation in Washington State—Part 2: Developing Mitigation Plans (Version 1), or the most current Department of Ecology publication addressing wetland mitigation.
  3. Wetland mitigation actions shall not result in a net loss of wetland area unless the following criteria are met as determined by a site-specific function assessment:
    - a. The lost wetland area provides only minimal functions and the mitigation action(s) results in a net gain in wetland functions; or
    - b. The lost wetland area provides only minimal functions and other replacement areas provide greater benefits to the functioning of the watershed, such as riparian habitat restoration and enhancement.
  4. Mitigation actions that require compensation by replacing, enhancing, or substitution, shall occur in the following order of preference:
    - a. Restoring wetlands on sites that were formerly wetlands.
    - b. Creating wetlands on disturbed sites, such as those with vegetative cover consisting primarily of exotic introduced species.

- c. Enhancing wetlands and/or wetland buffers with significantly degraded functions and values. The amount of required enhancement is dependent on the wetland classification in subsection 5.
- 5. a. The following ratios are required for the restoration, creation or enhancement of wetlands for authorized alterations. As determined by the Director, wetland mitigation may include the preservation and enhancement of habitat if it provides greater ecological function than the existing wetland. The first number specifies the area of replacement wetlands, and second specifies the area of wetlands altered:

	Restoration or Creation Ratios	Enhancement Ratios
Category I	6:1	16:1
Category II	3:1	16:1
Category III	2:1	8:1
Category IV	1.5:1	6:1

- b. Replacement ratios may be increased under the following circumstances to achieve the equivalent wetland function of the wetland that is altered:
  - (1) Uncertainty exists as to the probable success of the proposed restoration or creation; or
  - (2) A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site; or
  - (3) Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted.
- c. Replacement ratios may be decreased when the proposed mitigation actions are conducted in advance of the impact and result in no net loss in wetland functions.
- 6. If the applicant demonstrates by clear and convincing evidence that the avoidance and mitigation standards required in subsection 25.09.160.E.5.a will deprive the applicant of reasonable use of the applicant's property, the Director may waive or modify the standards to the extent necessary to allow reasonable use as part of the exception under Section 25.09.300. Notwithstanding such demonstration, the Director may deny the waiver if the Director determines that not applying these standards would cause significant injury to occupiers of the land, to other properties, to public resources, or to the environment.
- F. Mitigation Timing. Any restoration, creation or enhancement of wetlands that is required as mitigation shall be completed prior to issuance of the certificate of occupancy for the displacing use. If that has not occurred or if no certificate of occupancy is needed, the applicant shall submit plans that establish a specific schedule for completion, which must be approved by the Director, and shall provide a bond of at least one hundred and fifty percent (150%) of the cost of installation, in addition to the monitoring

plan and bond required under subsection G. If the required mitigation can be completed for less than five thousand dollars (\$5,000), no bond is required under subsection F or G.

- G. A monitoring plan shall be prepared to monitor successful re-establishment of the wetland for a period of five growing seasons or the period required to achieve the performance standards of the plan, whichever is earlier. The applicant shall provide a bond in an amount of at least one hundred fifty percent (150%) of the cost to retain a qualified wetlands scientist to assess the wetland and submit a report to the City at least twice yearly, prior to and near the end of each growing season and shall also provide a bond in an amount sufficient to implement additional restoration measures if the replacement wetland does not equal the functions of the wetland displaced at the end of five growing seasons.
- H. Other Agency Regulations. Review of projects subject to the wetland provisions of this chapter shall be coordinated by the applicant with the appropriate state and federal agencies. The applicant should make early contact with these agencies to ensure compliance with local, state and federal regulations.
- I. In addition the information provided pursuant to Section 25.09.330 and to Director's Rule, the Director may require third-party review when the professional opinions of the applicant's representative and the Department's reviewers cannot be reconciled. The third party review will be conducted by a qualified wetland consultant hired by the Director and paid for by the applicant.

(Ord. [124447](#), § 16, 2014; Ord. 123106, § 10, 2009; Ord. 122050 § 1, 2006; Ord. 116976 § 6, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.180 - Development standards for steep slope areas

- A. This Section 25.09.180 and Section 25.09.080 apply to parcels containing a steep slope area or buffer.
- B. Impacts on steep slope areas
  - 1. Development is prohibited on steep slope areas, unless the applicant demonstrates that the provisions of subsections 25.09.180.B.2 or 25.09.180.E apply.
  - 2. Provided that all the provisions of this Chapter 25.09 and all applicable provisions of Title 23 and Chapters 22.800 through 22.808 are met, subsection 25.09.180.B.1 does not apply when the applicant demonstrates the development meets one of the following criteria. In determining whether these criteria are met, the Director may require a geotechnical report to verify site conditions and to evaluate the impacts of the development in the steep slope area and shall require such a report for criteria in subsections 25.09.180.B.2.c and 25.09.180.B.2.d. The geotechnical report is subject to the provisions for third party review in subsection 25.09.080.C.
    - a. Development is located where existing development is located, if the impact on the steep slope area is not altered or increased; or
    - b. Development is located on steep slope areas that have been created through previous legal grading activities, including rockeries or retaining walls resulting from rights of way improvements, if no adverse impact on the steep slope area will result; or
    - c. Development is located on steep slope areas that are less than 20 feet in vertical rise and that are 30 feet or more from other steep slope areas, if no adverse impact on the steep slope area will result; or
    - d. Development is located on steep slope areas where the Director determines that application of subsection 25.09.180.B.1 would prevent necessary stabilization of a landslide-prone area.
  - 3. Clearing vegetation or any type of vegetation and site restoration management authorized under this Chapter 25.09 is not "development" for purposes of applying any of the provisions of subsection 25.09.180.B.2.
- C. Buffers.

1. Steep slopes have fifteen-foot (15') buffers from the top and toe of a slope unless the Director determines that a greater or lesser buffer is required based on the following considerations:
    - a. Proposed construction method and its effect on the stability of the slope and erosion potential;
    - b. Techniques used to keep the disruption of existing topography and vegetation to a minimum; and
    - c. Preparation of technical reports and plans to address and propose remedies regarding soils and hydrology site constraints.
  2. Development is prohibited on steep slope area buffers, except as authorized in subsection B2 or to provide access to such an area, which shall be kept to a minimum, and except as provided in subsection E.
- D. Vegetation Removal and Replanting. If removal of trees or vegetation in a steep slope area and its buffer is authorized as part of approved development, it shall be kept to a minimum, and shall be carried out pursuant to a tree and revegetation plan described in section 25.09.320. Other removal of, clearing, or any action detrimental to trees or vegetation in a steep slope area or buffer is prohibited, except as provided in Section 25.09.320. In addition to complying with Section 25.09.320, any replanting that occurs shall consist of native vegetation.
- E. 1. Steep Slope Area Variance. The Director may reduce the steep slope area buffer and may authorize limited intrusion into the steep slope area and steep slope buffer to the extent allowed in subsection E2 only when the applicant qualifies for a variance by demonstrating that:
- a. the lot where the steep slope or steep slope buffer is located was in existence before October 31, 1992; and
  - b. the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.
2. If any buffer reduction or development in the critical area is authorized by a variance under subsection E1, it shall be the minimum to afford relief from the hardship and shall be in the following sequence of priority:
- a. reduce the yards and setbacks, to the extent reducing the yards or setbacks is not injurious to safety;
  - b. reduce the steep slope area buffer;
  - c. allow an intrusion into not more than thirty percent (30%) of the steep slope area.
3. The Director may impose additional conditions on the location and other features of the proposed development as necessary to carry out the purpose of this chapter and mitigate the reduction or loss of the yard, setback, or steep slope area or buffer.
4. The process and procedures for a variance under this subsection E shall be as prescribed for Type II land use decisions in Chapter 23.76.

(Ord. [124447](#), § 17, 2014; Ord. 123106, § 11, 2009; Ord. 122050 § 1, 2006; Ord. 117945 § 2, 1995; Ord. 116976 § 7, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.200 - Development standards for fish and wildlife habitat conservation areas

- A. Development standards for parcels with riparian corridors
1. a. The provisions of this subsection 25.09.200.A apply to all development on parcels containing riparian corridors as defined in subsection 25.09.020.D.5. In addition, the provisions of subsection 25.09.200.C apply to these parcels, except subsection 25.09.200.C.2 with respect to fish. In the

event of an irreconcilable conflict between the provisions of subsection 25.09.200.C and this subsection 25.09.200.A, the most restrictive provision applies.

- b. It is the long term goal of the City to restore the City's riparian corridors and to protect salmon passage in such corridors where scientifically justified. The City has determined that best available science supports protecting these riparian corridors as described in this Chapter 25.09. Where past development has encroached into riparian corridors, redevelopment shall be regulated subject to the provisions in Section 25.09.045.

## 2. Riparian watercourse

- a. Development is prohibited within or over the watercourse, except as provided in this subsection 25.09.200.A.2.a or subsection 25.09.020.A.2.b. If no other access is available to the property, the Director may approve access over the watercourse, provided that it maintains the natural channel and floodway of the watercourse and that disturbance of the riparian management area is kept to a minimum.
- b. On Haller and Bitter Lakes, piers are regulated pursuant to the development standards for similar structures in the Shoreline District, Chapter 23.60A, Subchapter XV, The Urban Residential Environment, Sections 23.60A.152, and 23.60A.187. If a pier is allowed, access to it through the riparian management area is also allowed, provided the impact on the naturally functioning condition of the riparian management area from the pier's location, method of construction, and construction materials is kept to a minimum.
- c. In the riparian watercourse any action detrimental to habitat, trees or vegetation including but not limited to clearing or removal, is prohibited, except as provided in Section 25.09.320.

## 3. Riparian management area

- a. The riparian management area is defined in subsection 25.09.020.D.5. Existing public or private streets are excluded from the regulations for the riparian management area unless the provisions of Chapters 22.800 through 22.808, the Stormwater Code apply, in which case the Director shall require adequate stormwater detention to prevent harm from the street to habitat on the parcel and downstream and to keep degradation of water quality for habitat to a minimum.
- b. Activities in the riparian management area
  - 1) Development is prohibited in the riparian management area, except to provide access to development approved under subsection 25.09.200.A.2 and except under subsections 22.09.200.A.3.b.2, 25.09.200.A.3.c, and 25.09.200.A.3.d.
  - 2) In the riparian management area any action detrimental to habitat, trees or vegetation, including but not limited to clearing or removal, is prohibited, except as provided in subsection 25.09.200.A.3.c and Section 25.09.320.
- c. Riparian Management Area Vegetation.
  - 1) If the vegetation in the riparian management area protects the fish habitat and wildlife habitat as they exist on the site at the time development is proposed, including preventing erosion and protecting water quality, the existing vegetation shall remain undisturbed, except as allowed under Section 25.09.320.
  - 2) If the riparian management area is not functioning in the manner set out in subsection 25.09.200.A.3.c.1 above, the applicant shall prepare and carry out a tree and vegetation plan that augments the existing vegetation with native vegetation to the extent commensurate with the impact of the development on the riparian management area. The plan shall be prepared and executed consistent with Section 25.09.320. Vegetation in the riparian management area shall not be removed or otherwise disturbed until the applicant is ready to immediately replant according to the approved plan. A monitoring plan shall be prepared to monitor the establishment of the vegetation. The plan shall

cover five growing seasons or the period needed to successfully carry out the plan, whichever is earlier.

- d. In addition to subsections 25.09.200.A.3.b.2 and 25.09.200.A.3.c, development is allowed in the riparian management area on lots existing prior to May 9, 2006 if the applicant demonstrates that:
    - 1) the development is in the limited riparian development area, which is the area in the riparian corridor but outside of the watercourse and more than 75 feet from the top of the watercourse bank for Type F waters with anadromous fish present for any part of the year, more than 50 feet from the top of the watercourse bank for Type F waters where anadromous fish are not present for any part of the year and more than 50 feet from the top of the watercourse bank for Type Np and Ns waters;
    - 2) the development complies with Section 22.805.080 and 22.805.090, regardless of the area of land disturbing activity or the size of the addition or replacement of impervious surface, except as provided in subsection 25.09.200.3.e; and
    - 3) any development, including but not limited to coverage by impervious surface, does not exceed 35 percent of the total area of the limited riparian development area, provided that the maximum lot coverage does not exceed that allowed under Title 23, and except as provided in subsection 25.09.200.3.e.
  - e. When compliance with Sections 22.805.080 and 22.805.090 is required solely based on subsection 25.09.200.3.d.2 above, the Director may approve a restoration plan in lieu of requiring compliance with subsections 25.09.200.3.d.2 and 25.09.200.3.d.3 if the applicant demonstrates that the plan meets the following criteria:
    - 1) The watercourse or riparian management area function will be restored so that it prevents erosion, protects water quality, and provides diverse habitat; and
    - 2) The restoration results in greater protection of the watercourse and riparian management area than compliance with subsections 25.09.200.3.d.2 and 25.09.200.3.d.3.
4. Daylighting water in pipes and culverts
- a. Pursuant to Section 25.09.200.D, the Director may require daylighting pipes and culverts that meet the definition of fish and wildlife corridors in Section 25.09.020.D.3.c.
  - b. The City encourages daylighting pipes and culverts connecting Type S, F, Np and Ns waters that have fish habitat downstream and upstream from the pipe or culvert, and the Director is authorized to modify development standards as set out in subsection 25.09.200.A.4.c below when the applicant submits a plan for daylighting such a pipe or culvert that meets the following criteria:
    - (1) the plan is prepared by a qualified professional;
    - (2) the ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor area is compatible with and protects the ecological functions of the existing riparian corridor upstream and downstream and does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and
    - (3) if the plan proposes daylighting the pipe or culvert in a different location on the parcel from its current location or off the parcel, the ecological functions required in subsection (2) above are provided as effectively as they would be without the relocation.
  - c. If the Director finds the conditions in subsection 4b are met, the Director may modify the following development standards. The modification shall be the minimum to provide sufficient area to meet the standards in subsection 4b and shall be in the following order of priority:

- (1) Yard and/or setback requirements on the property may be reduced, unless reducing them is injurious to safety.
  - (2) The riparian corridor watercourse and adjacent area maintained as a riparian management area under the approved plan may count toward open space requirements for all multifamily or commercial zone requirements.
  - (3) Required parking may be reduced up to twenty five percent (25%).
  - (4) The riparian management area may be reduced.
- d. Nothing in this subsection alters the rights of the owner of the pipe or culvert, if that person is not an applicant for a permit.
5. Other Agency Regulations. Review of projects subject to the riparian corridor provisions of this chapter shall be coordinated with the Washington State Department of Fish and Wildlife when hydraulic project approval is required, and the U.S. Army Corps of Engineers when they have jurisdiction under Section 404 of the Federal Clean Water Act. The applicant is encouraged to make early contact with these agencies to ensure compliance with local, state and federal riparian corridor regulations.
- B.
  1. Development on parcels containing fish and wildlife habitat conservation areas shall comply with any species habitat management plan set out in a Director's Rule. The Director may establish by rule a species habitat management plan to protect any priority species identified by the Washington State Department of Fish and Wildlife or to protect species of local importance.
  2. Any person proposing development on a parcel containing fish and wildlife habitat conservation areas shall consult with the Washington State Department of Fish and Wildlife and comply with any requirements of that agency, except as limited in subsections 25.09.200.A and 25.09.200.B.
- C. Based on information provided by a qualified wildlife biologist, the Director may condition development on parcels containing wildlife habitat or corridors defined in subsection 25.09.020.D.3 to protect fish or wildlife habitat corridors. Conditions may include, but are not limited to:
  1. Establishment of buffer zones;
  2. Preservation of important vegetation and habitat features;
  3. Limitation of access to habitat areas;
  4. Seasonal restriction of construction activities;
  5. Preservation of the ability for fish to pass between fish habitat in Type S, F, Np and Ns waters upstream and downstream of the parcel. The application requirements and general conditions of this Chapter 25.09, Sections 25.09.330 and 25.09.060, do not apply if the person responsible for development of the parcel has either a Hydraulic Project Approval from the Washington Department of Fish and Wildlife or a Section 404 permit under the federal Clean Water Act from the United States Army Corps of Engineers. Nothing in this subsection 25.09.200.C alters the rights of the owner of the pipe or culvert, if that person is not an applicant for a permit.
  6. Requiring the developer to daylight a pipe or culvert defined in subsection 25.09.020.D.3.c, when the conditions in subsection 25.09.200.C.6.a below are met. When requiring daylighting, the Director is authorized to modify the conditions set out in subsection 25.09.200.C.6.b. Nothing in this subsection 25.09.200.C.6 alters the rights of the owner of the pipe or culvert, if that person is not an applicant for a permit.
    - a. The Director may require daylighting under the following conditions:
      - 1) When the existing pipe or culvert cannot remain in its current location and provide an effective passage for anadromous fish due to the development.
      - 2) Other methods for preserving fish passage such as pipe or culvert placement or site engineering are not feasible.



- b. If daylighting is required then the applicant must prepare a plan that demonstrates the following:
    - 1) The ecological functions of the daylighted waters and resulting new riparian management area are compatible with and protect the functions of pipes and culverts upstream and downstream and the ecological functions of the existing riparian corridor upstream and downstream and do not contribute to flooding.
    - 2) The ecological functions include preventing erosion, protecting water quality, and providing diverse habitat.
  - c. The Director determines that daylighting the pipe or culvert and the impacts from the development to fish passage on the parcel are roughly proportionate.
  - d. When requiring daylighting, the Director is authorized to modify the following conditions:
    - 1) Yard and/or setback requirements on the property may be reduced to provide sufficient area for daylighting and creating a riparian management area, unless reducing them is injurious to safety.
    - 2) The riparian corridor watercourse and riparian management area may count toward open space requirements for all multifamily or commercial zone requirements.
    - 3) Required parking may be reduced up to 25 percent.
    - 4) The riparian management area may be reduced to the extent needed to provide sufficient area for the plan described in subsection 25.09.200.C.6.a.2.
- D. Designating species of local importance and their habitat
- 1. The Director on an annual basis shall accept and consider nominations for species of wildlife and their habitat to be designated as locally important. The designation of a species of local importance and its habitat shall require an amendment to this Chapter 25.09.
  - 2. Species or habitat to be designated shall exhibit the following characteristics:
    - a. Local populations of native species are in danger of extinction based on existing trends:
      - 1) Local populations of native species that are likely to become endangered; or
      - 2) Local populations of native species that are vulnerable or declining;
    - b. The species has recreational, commercial, game, tribal, or other special value;
    - c. Long-term persistence of a species is dependent on the protection, maintenance, and/or restoration of the nominated habitat;
    - d. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in Seattle;
    - e. Areas nominated to protect a particular habitat or species have either high-quality habitat or habitat with a high potential to recover to a suitable quality, and the habitat is limited in quantity, highly vulnerable to alteration, or connects habitats.
  - 3. Species and habitats may be nominated for designation by any person. Nominations shall be in writing, address the characteristics listed in subsection 25.09.200.D.2, and state whether specific habitat features are being nominated (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety. Where restoration of habitat is proposed, a specific plan for restoration shall be provided with the application, or the nomination shall include management strategies for the species or habitats. Restoration plans and management strategies shall be supported by the best available science.
  - 4. The Director shall determine whether the nomination proposal is complete, and if complete, shall evaluate it under the criteria in subsection 25.09.200.D.2 and make a recommendation to the

Mayor and Council based on that information. If the nomination is adopted, the Director may establish habitat restoration plans and habitat and species management strategies by rule.

(Ord. [124447](#), § 18, 2014; Ord. [124105](#), § 40, 2013; Ord. 123106, § 12, 2009; Ord. 122050, § 1, 2006; Ord. 116976, § 8, 1993; Ord. 116253, § 1(part), 1992)

#### 25.09.220 - Development standards for abandoned landfills

- A. Regulation of Development on Abandoned Landfills. Development on abandoned landfills is subject to Seattle-King County Health Department requirements for the applicant to submit an excavation and development work plan, prepared by a licensed engineer with experience in landfill construction and/or management, and comply with other applicable requirements to prevent damage from methane gas buildup, subsidence, and earthquake induced ground shaking as contained in Chapter 22.170, Grading Code, Title 22, Subtitle I, Building Code, and regulations pertaining to development on abandoned landfill sites. Technical studies shall be required to indicate whether these areas pose a threat to development on an abandoned landfill site.
- B. Areas within 1000 feet of Methane-producing Landfills. Areas within 1000 feet of methane-producing landfills may be susceptible to accumulations of hazardous levels of methane gas in enclosed spaces. Methane barriers or appropriate ventilation may be required in these areas as specified in Title 22, Subtitle I, Building Code, and Seattle-King County Health Department regulations.

(Ord. 123106, § 13, 2009; Ord. 122050 § 1, 2006; Ord. 116253 § 1(part), 1992)

#### 25.09.240 - Short subdivisions and subdivisions

- A. This Section 25.09.240 applies to all applications for short subdivisions and subdivisions, excluding unit lot subdivisions, on parcels containing any part of a riparian corridor, wetlands, wetland buffers, or steep slope areas in addition to the standards in Title 23.
- B. Parcels shall be divided so that each lot contains an area for the principal structure, all accessory structures, and necessary walkways and for access to this area that are outside all environmentally critical areas and buffers identified in subsection 25.09.240.A except as follows:
  - 1. The required area and access may be located in the footprint of an existing lawful principal structure used for residential use that encroaches into an environmentally critical area or buffer identified in subsection A, provided it does not further alter or increase the impact to the environmentally critical area or buffer.
  - 2. Access may be provided by a bridge over a riparian corridor when the Director determines no other access is available and (a) access is provided by a freestanding structure that maintains the natural channel and floodway of the watercourse and (b) the disturbance of the riparian corridor and any other adjacent environmentally critical area or buffer is kept to a minimum.
  - 3. Development may encroach into that portion of a steep slope area or its buffer for which the Director has determined that criteria in subsection 25.09.180 B2a, b, or c are met for the particular short subdivision, or subdivision under consideration.
- C. Lots shall be configured to preserve the environmentally critical areas and their buffers identified in subsection A by:
  - 1. Establishing a separate buffer tract or lot with each owner having an undivided interest; or
  - 2. Establishing non-disturbance areas on individual lots.
- D. The environmentally critical areas and buffers identified in subsection A above, except for areas qualifying for development under subsection B1-4, shall be designated non-disturbance areas on the final plat. A notice that these non-disturbance areas are located on the lots, including the definition of

"non-disturbance area," shall be recorded in the King County Office of Records and Elections along with the final plat in a form approved by the Director. At the same time, a covenant protecting non-disturbance areas shall be recorded as set out in Section 25.09.335.

- E. In computing the number of lots a parcel in a single family zone may contain, the Director shall exclude the following areas:
1. Easements and/or fee simple property used for shared vehicular access to proposed lots that are required under Section 23.53.005.
  2. The area of the environmentally critical areas and buffers identified in subsection A, unless they are on a lot that meets one of the following standards:
    - a. the provisions of subsection B; or
    - b. an Administrative Conditional Use is obtained under Section 25.09.260, if it is not practicable to meet the requirements of subsection B considering the parcel as a whole.
- F. Application Submittal Requirements. All short subdivision and subdivision applications, in addition to the application submission requirements included in Title 23 shall meet the applicable application submittal requirements of this chapter, Section 25.09.330, and shall include the information contained in this subsection and Section 25.09.260, as applicable, on the surveyed site plan.

(Ord. [124105](#), § 41, 2013; Ord. 122050 § 1, 2006; Ord. 116976 § 9, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.260 - Environmentally critical areas administrative conditional use

##### A. Application procedure

1. An application for an environmentally critical areas conditional use may be submitted under either of the following circumstances:
  - a. If an applicant demonstrates it is not practicable to comply with the requirements of subsection 25.09.240.B considering the parcel as a whole, the applicant may apply for an administrative conditional use permit, authorized under Section 23.42.042, under this Section 25.09.260 to allow the Director to count environmentally critical areas and their buffers that would otherwise be excluded in calculating the maximum number of lots and units allowed on the parcel under subsection 25.09.240.E.
  - b. An applicant may also apply for an administrative conditional use permit to allow the Director to approve smaller than required lot sizes and yards, and/or more than one dwelling unit per lot.
2. If an administrative conditional use application includes an application to authorize development in a critical area or buffer, then the application is not required to include an application for the variances allowed under subsections 25.09.180.E or Section 25.09.280.

##### B. Standards. The applicant shall demonstrate that the proposal meets the following:

1. Environmental impacts on critical areas
  - a. No development is in a riparian corridor, wetland, or wetland buffer.
  - b. No riparian management area or wetland buffer is reduced.
  - c. No development is on a steep slope area or its buffer unless the property being divided or, if no property is being divided, the property that is the subject of the administrative conditional use permit is predominantly characterized by steep slope areas, or unless approved by the Director under subsections 25.09.180.B.2.a, 25.09.180.B.2.b, or 25.09.180.B.2.c.
    - 1) The preference is to cluster units away from steep slope areas and buffers.

- 2) The Director shall require clear and convincing evidence that the provisions of this subsection 25.09.260.B are met if units are clustered on steep slope areas and steep slope area buffers with these characteristics:
    - a) a wetland over 1,500 square feet in size or a watercourse designated part of a riparian corridor; or
    - b) an undeveloped area over 5 acres characterized by steep slopes; or
    - c) areas designated by the Washington Department of Fish and Wildlife as urban natural open space habitat areas with significant tree cover providing valuable wildlife habitat.
  - d. The proposal protects Washington State Department of Fish and Wildlife priority species and maintains wildlife habitat.
  - e. The open water area of a shoreline habitat, wetland or riparian corridor shall not be counted in determining the permitted number of lots.
  - f. The proposal does not result in unmitigated negative environmental impacts, including drainage and water quality, erosion, and slope stability on the identified environmentally critical area and its buffer.
  - g. The proposal promotes expansion, restoration or enhancement of the identified environmentally critical area and buffer.
2. General environmental impacts and site characteristics.
    - a. The proposal keeps potential negative effects of the development on the undeveloped portion of the site to a minimum and preserves topographic features.
    - b. The proposal retains and protects vegetation on designated nondisturbance areas, protects stands of mature trees, keeps tree removal to a minimum, removes noxious weeds and protects the visual continuity of vegetated areas and tree canopy.
  3. Neighborhood compatibility.
    - a. The total number of lots permitted on-site shall not be increased beyond that permitted by the underlying single-family zone.
    - b. Where dwelling units are proposed to be attached, they do not exceed the height, bulk and other applicable development standards of the Lowrise 1 (LR1) zone.
    - c. The development is reasonably compatible with and keeps the negative impact on the surrounding neighborhood to a minimum. This includes, but is not limited to, concerns such as neighborhood character, land use, design, height, bulk, scale, yards, pedestrian environment, and preservation of the tree canopy and other vegetation.

#### C. Conditions

1. In authorizing an administrative conditional use, the Director shall mitigate adverse negative impacts by imposing requirements and conditions necessary to protect riparian corridors, wetlands and their buffers, and steep slope areas and their buffers, and may impose additional conditions to protect other properties in the zone or vicinity in which the property is located.
2. In addition to any conditions imposed under subsection 25.09.260.C.1, the following conditions apply to all administrative conditional uses approved under this Section 25.09.260:
  - a. Replacement and establishment of native vegetation shall be required where it is not possible to save trees or vegetation.
  - b. Where new lots are created, the following standards apply:
    - 1) The development as a whole shall meet development standards under Title 23 and this Chapter 25.09 applicable at the time the application is vested.

- 2) If new lots are created under Sections 25.09.240 and 25.09.260, development on individual lots may be nonconforming as to some or all of the development standards, except that private usable open space or private amenity areas for each dwelling unit shall be provided on the same lot as the dwelling unit it serves.
- 3) Subsequent platting actions or additions or modifications to structures may not create or increase any nonconformity of the development as a whole to this Chapter 25.09, and this shall be noted on the document creating the new lots that is recorded with the Director of the King County Department of Records and Elections.
- 4) Access easements and joint use and maintenance agreements shall be executed for use of common garage or parking areas, common open space, and other similar features and be recorded with the Director of the King County Department of Records and Elections.
- 5) The plat documents, as recorded with the Director of the King County Department of Records and Elections, shall include a notation that each lot approved by an environmentally critical areas conditional use permit is not a separate buildable lot, and that additional development of the each individual lot may be limited as a result of the application of development standards to the original lot.

D. The Director shall issue written findings of fact and conclusions to support the Director's decision. The process and procedures for notice of decision and appeal of this administrative conditional use shall be as prescribed for Type II land use decisions in Chapter 23.76.

(Ord. [124447](#), § 19, 2014; Ord. [124105](#), § 42, 2013; Ord. 123495, § 106, 2011; Ord. 122050 § 1, 2006; Ord. 119239 § 44, 1998; Ord. 116976 § 10, 1993; Ord. 116253 § 1(part), 1992)

25.09.280 - Yard and setback reduction and variance to preserve ECA buffers and riparian corridor management areas.

- A. The Director may authorize a twenty-five percent (25%) reduction, up to a maximum of five feet (5'), in yard or setback requirements for front or rear yards on a lot in existence as a legal building site prior to October 31, 1992, in order to maintain the full width of the riparian management area and of wetland or steep-slope area buffers.
- B. The Director may approve a yard or setback reduction greater than five feet (5') in order to maintain the full width of the riparian management area, wetland buffer or steep-slope area buffer through an environmentally critical areas yard or setback reduction variance when the following facts and conditions exist:
  1. The lot has been in existence as a legal building site prior to October 31, 1992.
  2. Because of the location of the subject property in or abutting an environmentally critical area or areas and the size and extent of any required environmentally critical areas buffer, the strict application of the applicable yard or setback requirements of Title 23 would cause unnecessary hardship; and
  3. The requested variance does not go beyond the minimum to stay out of the full width of the riparian management area or required buffer and to afford relief; and
  4. The granting of the variance will not be injurious to safety or to the property or improvements in the zone or vicinity in which the property is located; and
  5. The yard or setback reduction will not result in a development that is materially detrimental to the character, design and streetscape of the surrounding neighborhood, considering such factors as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining; and
  6. The requested variance would be consistent with the spirit and purpose of the environmentally critical policies and regulations.

- C. When an environmentally critical areas variance is authorized, the Director may attach conditions regarding the location, character and other features of a proposed development to carry out the spirit and purpose of this chapter.
- D. The process and procedures of an environmentally critical areas yard or setback reduction variance shall be as prescribed for Type II land use decisions in Chapter 23.76.

(Ord. 122050 § 1, 2006; Ord. 116976 § 11, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.300 - Environmentally critical area exception

##### A. Types of exceptions

1. General. An applicant for a City permit to develop real property that is located in an environmentally critical area or buffer may apply to the Director for an exception to modify environmentally critical area development standards, provided that an exception cannot be applied for to allow development or to obtain development credit under subsection 25.09.240.E or to relocate lot lines under Section 23.28.030. An applicant seeking relief under this Section 25.09.300 shall demonstrate that no other applicable administrative remedies in Chapter 25.09 or Title 23 will provide sufficient relief.
2. Public projects. If development in an environmentally critical area or buffer is necessary to accommodate a public facility or public utility, the public facility or public utility may be permitted according to the following criteria in lieu of subsections 25.09.300.C and 25.09.300.D:
  - a. No reasonable alternative location will accommodate the facility or utility, as demonstrated by an analysis of appropriate alternative location(s) provided by the applicant or the Director;
  - b. The facility or utility is located, designed, and constructed:
    - 1) to avoid adverse impacts to the extent feasible by not taking all or part of an action;
    - 2) to minimize adverse impacts; and
    - 3) to mitigate impacts to critical area disturbance to the maximum extent feasible;
  - c. All requirements of subsections 25.09.300.A.1, 25.09.300.B, 25.09.300.E, and 25.09.300.F apply; and
  - d. In granting an exception to the development standards in Section 25.09.160, Wetlands, the Director shall apply the avoidance and mitigation standards in subsection 25.09.160.E when imposing any conditions.

- B. 1. An applicant requesting modification shall provide the Director with the following information:
  - a. Documentation showing that no other applicable administrative remedy in Title 25.09 or Title 23 will provide sufficient relief;
  - b. Technical studies and other data that describe the possible injurious effects of the proposed development on occupiers of the land, on other properties, on public resources, and on the environment. Possible injurious effects must be described even when the injurious effect will become significant only in combination with similar effects from other developments;
  - c. Technical studies and other data by qualified persons showing that the proposed development will protect the occupiers of the land, other properties, public resources, and the environment to the same extent as the development standards that are proposed to be modified and explaining how this will occur;
  - d. Plans showing what can be developed in compliance with all environmentally critical area development standards and standards in Title 23, including the yard and setback standards for front and rear yards;

- e. An explanation with supporting evidence of how and why compliance with all environmentally critical areas development standards as shown on the plans required in subsection (d) would not permit any reasonable use of the property, including, but not limited to, submission of the following evidence:
  - (1) The date the applicant purchased the property or obtained the right to develop or use it;
  - (2) The price the applicant paid for the rights described in subsection (1); and
  - (3) Restrictions or conditions on use or development in existence when the applicant acquired the rights described in subsection (1).
- 2. The Director may require the applicant to provide additional information prepared by qualified persons on the topics described in subsection B1.
- 3. All technical studies and data shall be accompanied by sufficiently detailed information to allow the Director to evaluate it under the standards for scientific information set out in Washington Administrative Code (WAC) 365-195-905.
- C. The Director may modify or waive an environmentally critical areas development standard and/or the yard and setback standard for front or rear yards when an applicant demonstrates by clear and convincing evidence that strict application of the development standards would not permit any reasonable use of the property and that development undertaken pursuant to the modified or waived standards would not cause significant injury to occupiers of the land, to other properties, and to public resources, or to the environment.
- D. The relief granted by reduction, waiver, or other modification of an environmentally critical areas development standard and of the yard and setback standards for front or rear yards shall be the minimum to allow reasonable use of the property. Preference shall be given to modifying or waiving the yard and setback standards for front or rear yards. In modifying a regulation, the Director may impose reasonable conditions that prevent or mitigate the same harm that the modified or waived regulation was intended to prevent or mitigate. In granting an exception to the development standards in Section 25.09.160, Wetlands, the Director shall apply the avoidance and mitigation standards in subsection 25.09.160 E when imposing any conditions.
- E. The Director's decision must be consistent with the scientific approach used by the City in developing the environmentally critical area development standard at issue.
- F.
  - 1. The process and procedures for notice of decision and appeal of an environmentally critical areas exception shall be provided in the manner prescribed for Type II land use decisions in Chapter 23.76.
  - 2. The Director's decision shall be affirmed unless found to be clearly erroneous, and the burden of proof of justifying the environmentally critical areas exception shall be on the applicant.

(Ord. [124447](#), § 20, 2014; Ord. 122050 § 1, 2006; Ord. 117945 § 3, 1995; Ord. 116976 § 12, 1993; Ord. 116253 § 1(part), 1992)

#### 25.09.320 - Trees and vegetation

- A.
  - 1. Any action detrimental to habitat, vegetation or trees, including but not limited to clearing or removal, is prohibited, except as provided below, within the following areas: landslide-prone critical areas, (including steep slopes), steep slope buffers, riparian corridors, wetlands, and wetland buffers.
  - 2. Tree-topping is prohibited.
  - 3. The vegetation and tree removal and revegetation activities listed in subsections 3a—d are allowed. The application submittal requirements and general development standards in Sections

25.09.330 and 25.09.060 do not apply to actions under subsections 3a, b(1), c(2)(a) or d, provided that no other development is carried out for which a permit is required.

- a. Normal and routine pruning and maintenance of:
  - (1) up to seven hundred and fifty (750) square feet of trees and vegetative cover lawfully maintained prior to the effective date of Ordinance 122050 [131](#);
  - (2) trees and vegetation approved by permit prior to the effective date of Ordinance 122050, provided the conditions of the permit are complied with;
  - (3) lawns, paths and landscaping lawfully maintained prior to the effective date of Ordinance 122050 that were not in an environmentally critical area or buffer listed in subsection A1 above prior to the effective date of Ordinance 122050, but are in a listed area or buffer under this ordinance [chapter];
  - (4) steep slope areas described in subsection 25.09.180 B2a—c;
  - (5) other trees and vegetative cover, provided that when the area of work is over seven hundred fifty (750) square feet in area, a plan is filed with the Department that complies with subsections B2 and 3.
- b. Removing trees or vegetation as part of an issued building or grading permit consistent with a tree and revegetation plan, provided that
  - (1) when the area of work is under one thousand five hundred (1,500) square feet in area, a plan is filed with the Department that complies with subsections B1 and 2; or
  - (2) when the area of work is one thousand five hundred (1,500) square feet or more in area, a plan that complies with subsections B2 and 3 is filed with the Department, the plan keeps significant environmental impact to a minimum, the Director approves the plan before any disturbance occurs, and the work is performed by or under the direction of a qualified professional.
- c. Restoring or improving vegetation and trees, including removing non-native vegetation or invasive plants and noxious weeds by hand, to promote maintenance or creation of a naturally functioning condition that prevents erosion, protects water quality, or provides diverse habitat when
  - (1) the restoration or improvement is a condition to obtaining a permit or approval from the Director; or
  - (2) the restoration or improvement is not already a condition to obtaining a permit or approval from the Director, and
    - (a) when the area of work is under one thousand five hundred (1,500) square feet in area calculated cumulatively over three (3) years, a plan is filed with the Department that complies with subsections B1 and 2; or
    - (b) when the area of work is one thousand five hundred (1,500) square feet or more in area calculated cumulatively over three (3) years, or if the removal of invasive plants or noxious weeds is by machine or chemicals, a plan that complies with subsections B2 and 3 is filed with the Department, the plan keeps significant environmental impact to a minimum, the Director approves the plan before any disturbance occurs, and the work is performed by or under the direction of a qualified professional.
- d. Removing trees or vegetation when the Director determines the tree or vegetation is a threat to health or safety based on a report prepared by a qualified professional and the removal is performed by or under the direction of a qualified professional.

B. Standards for Plans.



1. Plans prepared under this subsection shall be consistent with the Department's standard tree and vegetation plans.
2. When the area of work exceeds seven hundred fifty (750) square feet in a landslide-prone area, the plan shall be approved by a geotechnical engineer or geologist licensed in the State of Washington with experience in analyzing geological hazards related to slope stability and vegetation removal on landslide prone areas. These plans shall be consistent with best management practices.
3. Plans prepared under this subsection shall be prepared by a qualified professional with experience related to the type of environmentally critical area or buffer where work will occur. These plans shall be consistent with best management practices.

(Ord. [124447](#), § 21, 2014; Ord. [124105](#), § 43, 2013; Ord. 122050 § 1, 2006; Ord. 121276 § 37, 2003; Ord. 116976 § 13, 1993; Ord. 116253 § 1(part), 1992)

Footnotes:

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**Editor's note**—Ordinance 122050 became effective May 9, 2006.

#### 25.09.330 - Application submittal requirements

All activities identified in Section 25.09.015 and not exempt from permit application requirements under Sections 25.09.045, 25.09.055, and subsections 25.09.200.A.4 and 25.09.320.A.3 shall meet the following application submittal requirements in addition to the application submittal requirements specified in other codes:

- A. Topographic Survey. A topographic site plan, prepared and stamped by a State of Washington licensed surveyor, is required for sites that include landslide-prone, flood-prone, riparian corridor, wetland or its buffer, and steep slope areas or their buffers. The topographic site plan shall include the following existing physical elements:
  1. Existing topography at two-foot (2') contour intervals on-site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;
  2. Terrain and stormwater-flow characteristics within the site, on adjacent sites within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;
  3. Location of areas with significant amounts of vegetation, and specific location and description of all trees with trunks six inches (6") or greater in diameter measured four feet, six inches (4'6") above the ground, and noting their species;
  4. Location and boundaries of all existing site improvements on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements. This shall include the amounts of developmental coverage, including all impervious surfaces (noting total square footage and percentage of site occupied);
  5. Location of all grading activities in progress, and all natural and artificial drainage control facilities or systems in existence or on adjacent lands on the site, within twenty-five feet (25') of the site's property lines, and in the full width of abutting public and private rights-of-way and easements;

6. Location of all existing utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on the site, on adjacent lands within twenty-five feet (25') of the site's property lines and in the full width of abutting public rights-of-way; and
  7. Such additional existing physical elements information for the site and surrounding area as required by the Director to complete review of a project subject to the standards of Chapter 25.09.
- B. Additional Site Plan Information. The following site plan information shall also be required for sites that include landslide-prone, flood-prone, riparian corridor, wetland, and steep slope areas or their buffers. Information related to the location and boundaries of environmentally critical areas and required buffer delineations shall be prepared by qualified professionals with training and experience in their respective area of expertise as demonstrated to the satisfaction of the Director.
1. Location and boundaries of all critical areas on the site and on adjacent lands within twenty-five feet (25') of the site's property lines, noting both total square footage and percentage of site;
  2. Location and identification of all riparian corridors and wetlands within one hundred feet (100') of the site's property lines;
  3. Location and boundaries of non-disturbance areas on the site that have been required by previous approvals.
  4. Proposed location and boundaries of all required undisturbed fenced areas and buffers on the site and on adjacent lands within twenty-five feet (25') of the site's property lines;
  5. Location and boundaries of all proposed site improvements on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements. This shall include the amount of proposed land disturbing activities, including amounts of developmental coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied);
  6. Location of all proposed grading activities and all proposed drainage control facilities or systems on the site or on adjacent lands within twenty-five feet (25') of the site's property lines, and on the full width of abutting public and private rights-of-way and easements;
  7. Location of all proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on the site, on adjacent lands within twenty-five feet (25') of the site's property lines, in the full width of abutting public rights-of-way, and any proposed extension required to connect to existing utilities, and proposed methods and locations for the proposed development to hook-up to these services; and
  8. Such additional site plan information related to the proposed development as required by the Director to complete review of a project subject to the standards of this chapter.
- C. Technical Reports. Technical reports and other studies and submittals shall be prepared as required by the Director detailing soils, geological, hydrological, drainage, plant ecology and botany, and other pertinent site information. The reports, studies and submittals shall be used to condition development to prevent potential harm and to protect the critical nature of the site, adjacent properties, and the drainage basin.

(Ord. [124105](#), § 44, 2013; Ord. 122050 § 1, 2006)

#### 25.09.335 - Posting, covenants, and recording conditions.

- A. During construction, the Director may require conditions to be posted on the site that are visible from public rights-of-way.
- B. The Director shall require a permanent covenant and a survey, if a survey has been prepared, be recorded in the King County Office of Records and Elections that describes and delineates all required non-disturbance areas, that prohibits development on and any disturbance of them, and that prohibits considering them for development credit in future plats or development proposals.

- C. 1. The Director shall require the boundaries of the following environmentally critical areas and/or their buffers and any permanent conditions imposed be legibly shown and described in a permanent covenant with the property, which shall be recorded in the King County Office of Records and Elections:
  - a. Fish and wildlife habitat conservation areas;
  - b. Wetland critical areas and their buffers; and
  - c. Steep slope areas and their buffers.
- 2. The covenant may be combined with the covenant required under subsection B, if that subsection applies. The covenant shall be recorded prior to the issuance of any permit or at the time a plat is recorded.
- D. The Director may require placement of small permanent visible markers to delineate the areas described in subsections B and C. The location of the markers shall be legibly shown and described in the permanent covenant.

(Ord. 122050 § 1, 2006)

#### 25.09.360 - State Environmental Policy Act.

This chapter establishes minimum standards to be applied to specific land use and platting actions in order to prevent further degradation of environmentally critical areas in the City, and is not intended to limit the application of the State Environmental Policy Act (SEPA). Projects subject to SEPA shall be reviewed and may also be conditioned or denied pursuant to Chapter 25.05.

(Ord. 122050 § 1, 2006; Ord. 116253 § 1(part), 1992)

#### 25.09.380 - Compliance with environmentally critical areas regulations.

Notwithstanding the provisions of Chapter 23.76 authorizing issuance of Master Use Permits and Council Land Use Decisions upon compliance with the criteria and procedures of that chapter, no permit for a development proposal or for actions described in Section 25.09.015 shall be issued unless it also complies with the regulations of this chapter.

(Ord. 122050 § 1, 2006; Ord. 116253 § 1(part), 1992)

#### 25.09.400 - Violations.

- A. It is a violation of this chapter to fail to comply with any provision of this chapter or with any term of any permit condition or approval issued pursuant to this chapter.
- B. It is a violation of this chapter to fail to comply with any order issued pursuant to this chapter or to remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter.
- C. It is a violation of this chapter to misrepresent any material fact in any application, on plans, or in any other information submitted to obtain any determination, authorization, permit condition, or approval under this chapter.
- D. It is a violation of this chapter to aid and abet, counsel, encourage, hire, command, induce or otherwise procure another to violate or fail to comply with this chapter.

(Ord. 122050 § 1, 2006; Ord. 116253 § 1(part), 1992)

25.09.410 - Authority to enforce.

- A. The Director is authorized to enforce this chapter and may call upon other appropriate City departments to assist in enforcement.
- B. The Director may, with the consent of the owner or occupier of any land, premises, building, or structure, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any land, watercourse, premises, building, or structure subject to the consent or warrant.
- C. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier, or other person responsible for the condition of the vegetation, land, watercourse, premises, building, or structure within the scope of this chapter.
- D. No provision of or term used in this chapter is intended to impose any duty upon the City or any of its officers or employees that would subject them to damages in a civil action.

(Ord. 122050 § 1, 2006)

25.09.420 - Investigation and notice of violation.

- A. The Director is authorized to investigate the condition of any vegetation, land, watercourse, premises, building, structure, activity, or use that the Director reasonably believes does not comply with the provisions of this chapter. The Director's investigation and determination that a violation exists is not limited by determinations made by determinations made by other City agencies.
- B. If after investigation the Director determines that any provision of this chapter has been violated, the Director may serve a notice of violation upon any person that the Director believes is responsible for the violation. The notice of violation may identify the violation by code section; and may state what corrective action (including restoration), if any, is necessary to comply with the provisions of this chapter, set a reasonable time for compliance; and state the penalty for violating this chapter. The Director may require that the restoration plan be prepared by a qualified professional, at the violator's expense. Wetland mitigation shall be consistent with Section 25.09.160.
- C. Any notice issued pursuant to subsection B shall be served upon the owner, occupier or other person responsible for the violation by personal service in the manner set forth in RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known address of such person(s). Service is complete at the time of personal service, or if mailed, three (3) days following the date of mailing. If a notice of violation sent by first class mail is returned as undeliverable, then service of the notice upon such person or persons may be made by posting the notice at a conspicuous place on the property where the violation occurred.
- D. If a notice of violation or order is recorded with the King County Department of Records and Elections, a notice of violation or order for the same violation need not be served upon a new owner. If a new notice of violation or order is not issued and served upon a new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner, starting on the date that the conveyance is completed.
- E. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to Sections 25.09.430 and 25.09.450 of this chapter, and nothing in this section requires the Director to issue a notice of violation prior to the imposition of civil or criminal penalties.

(Ord. 122050 § 1, 2006)

25.09.430 - Stop-work order.

- A. The Director may issue a stop-work order whenever any use, activity, work or development (1) is being done without a permit, determination, or authorization required by this Chapter 25.09, (2) is being done

contrary to any determination, authorization, permit, or approval of the Seattle Department of Construction and Inspections and the use, activity, work or development will immediately impact an environmentally critical area or materially impair the Director's ability to secure compliance with this Chapter 25.09, or (3) immediately threatens the public health, safety, and welfare with respect to the interests protected under this Section 25.09.430.

- B. The stop-work order shall describe the violation in writing and be posted on the premises or served on any person responsible for the violation. Except emergency work necessary to stabilize the site that may be required by the Director, it is unlawful for any work on the property to be done after the posting or service of a stop-work order until authorization to proceed is given by the Director.
- C. The stop-work order may require that vegetation, land, watercourse, premises, building, structure, or portion thereof, be vacated within a reasonable time, depending on the degree of danger, specified in the order. No person shall occupy the vegetation, land, premises, building, structure, or portion thereof after the date on which it is required to be vacated until the vegetation, land, watercourse, premises, building, structure, or portion thereof, is restored to a safe condition as determined by the Director.

(Ord. [124919](#), § 182, 2015; Ord. 122050 § 1, 2006)

#### 25.09.450 - Review by the Director.

- A. Any person significantly affected by a notice of violation or stop-work order issued by the Director pursuant to this chapter may obtain an administrative review of the notice or order by requesting such review in writing to the Director within ten (10) days of the date of the notice or order. When the last day of the period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day. A request for administrative review is an administrative remedy that must be exhausted before judicial review of the notice or order may be sought.
- B. Upon receipt of the request, the Director shall notify by mail any persons served within the notice or order and any person requesting review, advising them of the request for review, of the date of the review, and of the deadline for submitting additional written information for consideration. The deadline for submitting additional written information shall be ten (10) days from the date the notice of administrative review is mailed, unless otherwise agreed to by all persons served with the notice or order. The Director and all persons served with the notice or order may also agree to review the matter within a shorter period or time that shall not be less than three (3) days from the date the notice or order was issued.
- C. The Director shall conduct the administrative review and issue a decision on the request for administrative review in the form of an Order of the Director. The Director shall review all written information received by the submission deadline and any additional evidence or information available to the Seattle Department of Construction and Inspections staff and placed in the case file. The Director may also request clarification of information received and a site visit. After review of the case file and of the additional written information and/or after a site visit, the Director shall issue an Order of Director that may:
  - 1. Sustain the notice or order;
  - 2. Withdraw the notice or order;
  - 3. Continue the review to a date certain for receipt of additional information; or
  - 4. Modify the notice or order, which may include an extension of the compliance date, if any.
- D. The Director shall issue the Order of the Director no later than ten (10) days from the deadline for submitting additional information. The Order of the Director is mailed by first class mail to the person or persons named on the notice of violation or order and to any person who requested the administrative review. If the original notice or order was recorded with the King County Department of Records and Elections the Order of the Director shall also be recorded.

(Ord. [124919](#), § 183, 2015; Ord. 122050 § 1, 2006)

#### 25.09.460 - Civil penalty.

- A. Any person who violates or fails to comply with any provision of this chapter is subject to a civil penalty in an amount not to exceed Five Hundred Dollars (\$500) per day for each violation, and in the event of a continuing violation shall be subject to a cumulative civil penalty of \$500 per day for each violation from the time the violation occurs or begins until compliance is achieved. In cases where the Director has issued a notice of violation with a compliance date, the violation is deemed to begin, for purposes of determining the number of days of violation, on the date compliance is required by the notice of violation. For removing, clearing, or taking any action detrimental to a tree over six inches in caliper an additional civil penalty of Five Thousand Dollars (\$5,000) shall be assessed.
- B. Violations causing significant damage may be assessed an additional penalty in an amount reasonably determined to be equivalent to the economic benefit that the violation derived from the violation, measured as the greater of, the resulting increase in market value of the property, the value received by the violator, or the savings of construction costs realized.
- C. The penalty imposed by this section may be collected by civil action brought in the name of the City. The Director notifies the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney, with the assistance of the Director, takes appropriate action to collect the penalty. In any civil action for a penalty, the City has the burden of proving by a preponderance of the evidence that a violation exists or existed; the issuance of a notice of violation or of an Order following an administrative review by the Director is not itself evidence that a violation exists.

(Ord. 122050 § 1, 2006)

#### 25.09.470 - Alternative criminal penalty.

Any person who violates or fails to comply with this chapter shall be guilty of a gross misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 need be proved. The Director may request the City Attorney prosecute such violations criminally as an alternative to the civil penalty provision outlined in this chapter. Each day that a person continues to violate or fail to comply with the provisions of this chapter and each occurrence of a prohibited activity constitutes a separate offense.

(Ord. 122050 § 1, 2006)

#### 25.09.480 - Additional relief.

The Director may seek legal or equitable relief to enjoin any acts or practices and abate any condition that constitutes or will constitute a violation of this chapter.

(Ord. 122050 § 1, 2006)

#### 25.09.520 - Definitions

"Annual high static groundwater level" means the highest elevation where the soil is saturated with the main body of groundwater during any part of the year.

"Best management practices" means

- a. the practices defined in Section 22.801.030 of the Stormwater Code; and

- b. structural, nonstructural and managerial techniques identified by the Director, or by the director of a City agency when that agency is making determinations under this Chapter, as the most effective and practical means in an urban environment to mitigate adverse environmental effects on environmentally critical areas and buffers and their functions.

"Biologist" means a person who has earned a degree in biological sciences from an accredited college or university, or a professional who has equivalent educational training and has experience as a practicing biologist.

"Buffer" means a designated area adjacent to and/or a part of an environmentally critical area and intended to protect the environmentally critical area.

"City agency" means The City of Seattle or any of its subdivisions, including but not limited to, any City board, commission, committee, officer or department.

"Construction activity area" means all areas of land disturbing activity within a site or on adjacent sites or rights-of-way used during construction including, but not limited to, development coverage areas and construction access and storage areas.

"Contaminated soils" is defined in Section 21.36.012, Solid Waste Code.

"Detention" is defined in Section 22.801.050 of the Stormwater Code.

"Development" means all components and activities related to construction or disturbance of a site, including but not limited to land disturbing activities.

"Development standard" means a regulation establishing a limit on development.

"Director" means the Director of the Seattle Department of Construction and Inspections or the Director's designee.

"Downtown zones" means all Downtown Office Core, Downtown Retail Core, Downtown Mixed Commercial, Downtown Mixed Residential, Downtown Harbor Front, International District Mixed, International District Residential, Pike Market Mixed, and Pioneer Square Mixed, as defined in Chapter 23.30.

"Drainage-control facility" is defined in Section 22.801.050 of the Stormwater Code.

"Drainage-control system" is defined in Section 22.801.050 of the Stormwater Code.

"Ecological Function" means the work performed or role played individually or collectively by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the natural environment.

"Exception" refers to the environmentally critical areas exception, Section 25.09.300.

"Exemption" means to release a project either fully or partially from compliance with the environmentally critical areas regulations, or from specific development standards of this chapter, as provided in Section 25.09.045.

"Geologist" means a person who has earned a degree in geology from an accredited college or university and has at least five (5) years' experience as a practicing geologist or four (4) years of experience and at least two (2) years of postgraduate study, research or teaching. The practical experience shall include at least three (3) years of work in applied geology and evaluation, in close association with qualified practicing geologists or geotechnical/civil engineers.

"Geotechnical/civil engineer" means a practicing geotechnical/civil engineer licensed as a professional civil engineer by the State of Washington who has at least four (4) years of professional experience as a geotechnical engineer including experience with landslide evaluation.

"Groundwater regime" means the amount, distribution, and seasonal variation of water below the surface of the land.

"Impervious surface" is defined in Section 22.801.100 of the Stormwater Code.

"Improved public road right-of-way" means a right-of-way which either contains utilities or is paved.

"Infiltration facility" is defined in Section 22.801.100, Stormwater, Grading and Drainage Control Code.

"Invasive plants" means the plants listed for Western Washington in Washington State Department of Ecology Publication # 04-06-025.

"Land disturbing activity" means any activity that results in a movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Land disturbing activities include, but are not limited to, clearing, grubbing, grading, filling, excavation, or addition or replacement of impervious surface.

"Lot" means a platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley.

"Native fish" means a species of fish identified by the United States Fish and Wildlife Service as occurring in the Puget Sound area as part of its indigenous fresh water or marine aquatic fauna.

"Native vegetation" means vegetation, including trees, comprised of plant species that are indigenous and noninvasive, naturalized to the Puget Sound region and that reasonably can be expected to naturally occur on a site. Native vegetation does not include noxious weeds.

"Non-disturbance areas" means areas where development is not to be allowed.

"Normal pruning and maintenance" means for trees, shrubs and other woody plants compliance with American National Standards Institute A300 pruning standards.

"Noxious weeds" means weeds listed by the King County Noxious Weed Control Board.

"Ordinary high water mark" means, on all lakes, streams, and tidal water, that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter or as it may change thereafter in accordance with permits issued by the Director of the Department of Ecology; provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

"Parcel" means a lot, unplatted property or combination thereof, whether public or private property, in the City of Seattle, including City right of way.

"Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, the United States or any instrumentality thereof, and any entity of whatever type.

"Pesticide" means, but is not limited to:

- (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the Director may declare to be a pest;
- (b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and
- (c) Any spray adjuvant.

"Provisions of this chapter" means all sections of this chapter.



"Reasonable alternative location" means a location that can accommodate the proposal's objectives at the lowest level of impact to ecological function in consideration of the environmental, social and economic impacts on the public and the cost to the applicant.

"Retaining structure" means any improvement built up or composed of parts joined together in some definite manner and affixed to the ground for the purposes of retaining earth or rocks, including but not limited to concrete retaining walls, mechanically stabilized earth systems, soil nails, terracing, or flower bed frames.

"Riparian watercourse" means a channel through which water flows as defined in subsection 25.09.020 D5.

"Short subdivision" means the division or redivision of land into nine (9) or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, development or financing, and shall include all resubdivision of previously platted land and properties divided for the purpose of sale or lease of townhouse units.

"Site" means the unit of land for which an applicant is receiving permission to carry out development.

"Species of local importance" means those species of wildlife designated under Section 25.09.200E.

"Stabilize" means to possess permanent characteristics, either naturally or by manmade improvements, which can be shown to have sufficient resistance to forces normally expected to occur, and those forces that may occur as a result of a one (1) in one hundred (100) year event.

"Steep slopes" means slopes of forty percent (40%) inclination or more within a vertical elevation change of at least ten feet (10'). For the purpose of this definition, a slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten feet (10') of elevation difference. Also for the purpose of this definition:

- (a) The "toe" of a slope means a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "toe" of a slope is the lower most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25'); and
- (b) The "top" of a slope is a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "top" of a slope is the upper most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25) feet.

"Steep slope area" means an area described in subsection 25.09.020 A 3.

"Street" means a right-of-way which is intended to provide or which provides a roadway for general vehicular circulation, is the principal means of vehicular access to abutting properties and includes space for utilities, pedestrian walkways, sidewalks and drainage.

"Subdivision" means the division or redivision of land into ten (10) or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease and transfer of ownership.

"Utility lines" means pipes, cables or other linear conveyance systems used to transport power, water, gas, oil, wastewater or similar items.

"Vegetation" means any and all organic plant life growing on, below, or above the soil surface.

"Watercourse" is defined in Section 22.801.240.

"Wetland Creation" means the creation of a wetland within an upland area.

"Wetland Restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland.

"Wildlife" means all species of the animal kingdom as defined in RCW 77.08.010.

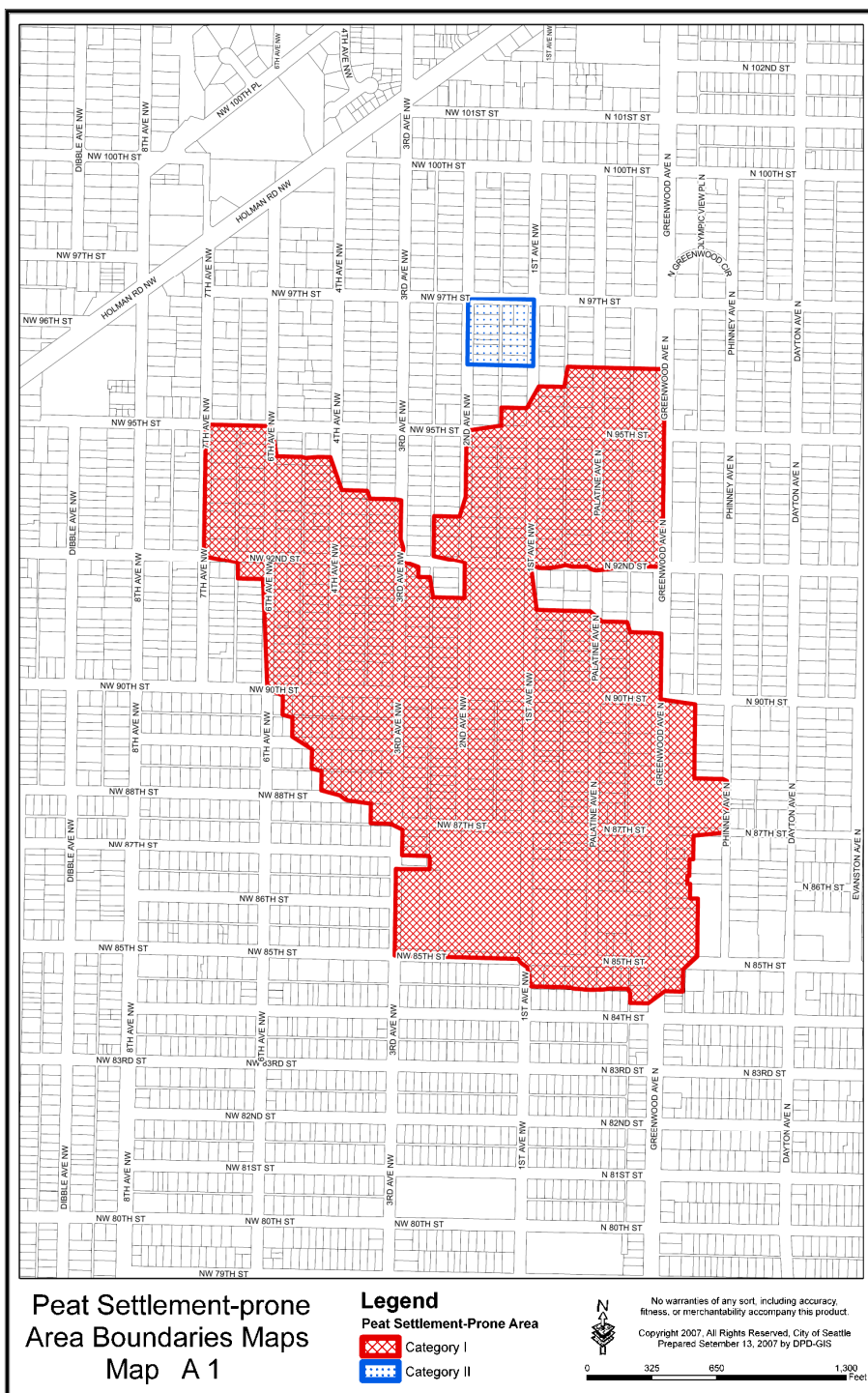
"Wildlife habitat" means and refers to those areas that support individual or populations of animals defined as wildlife for all or part of an annual cycle.

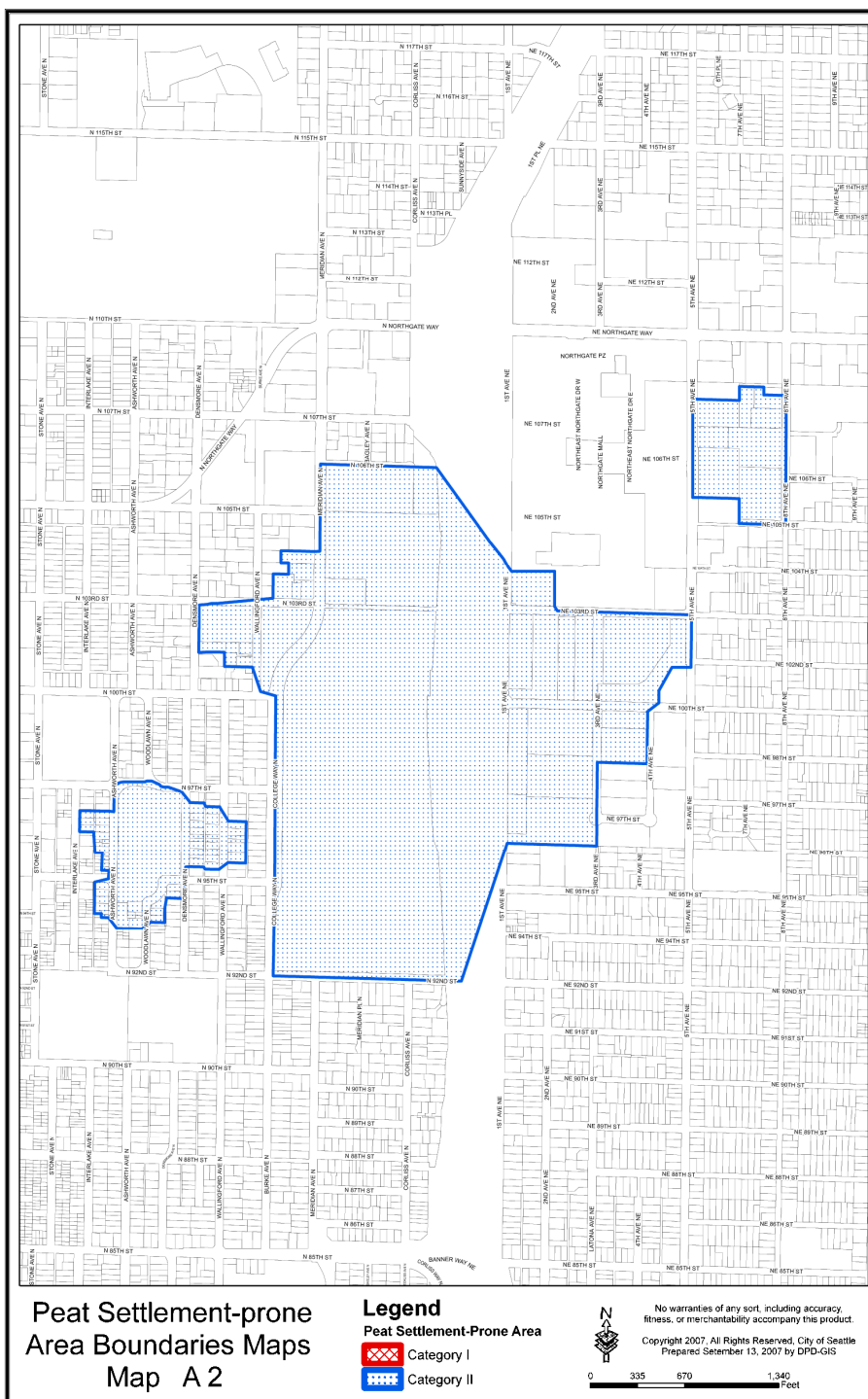
(Ord. [124919](#), § 184, 2015; Ord. [124447](#), § 22, 2014; Ord. [124105](#), § 45, 2013; Ord. 123106, § 14, 2009; Ord. 122738, § 9, 2008; Ord. 122050, § 1, 2006; Ord. 121276, § 29, 2003; Ord. 116976, § 15, 1993; Ord. 116253, § 1(part), 1992.)

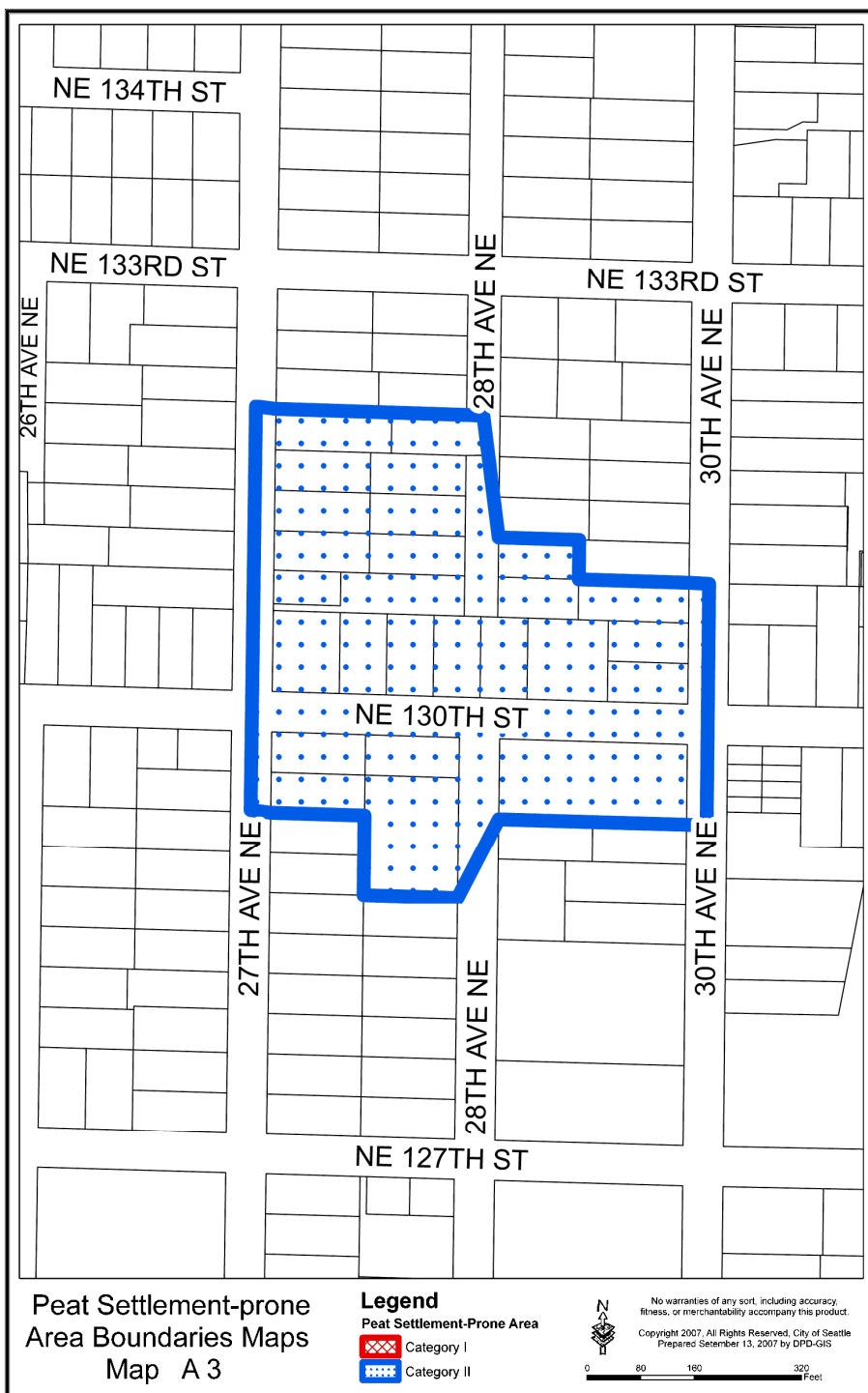
#### 25.09.530 - Construction.

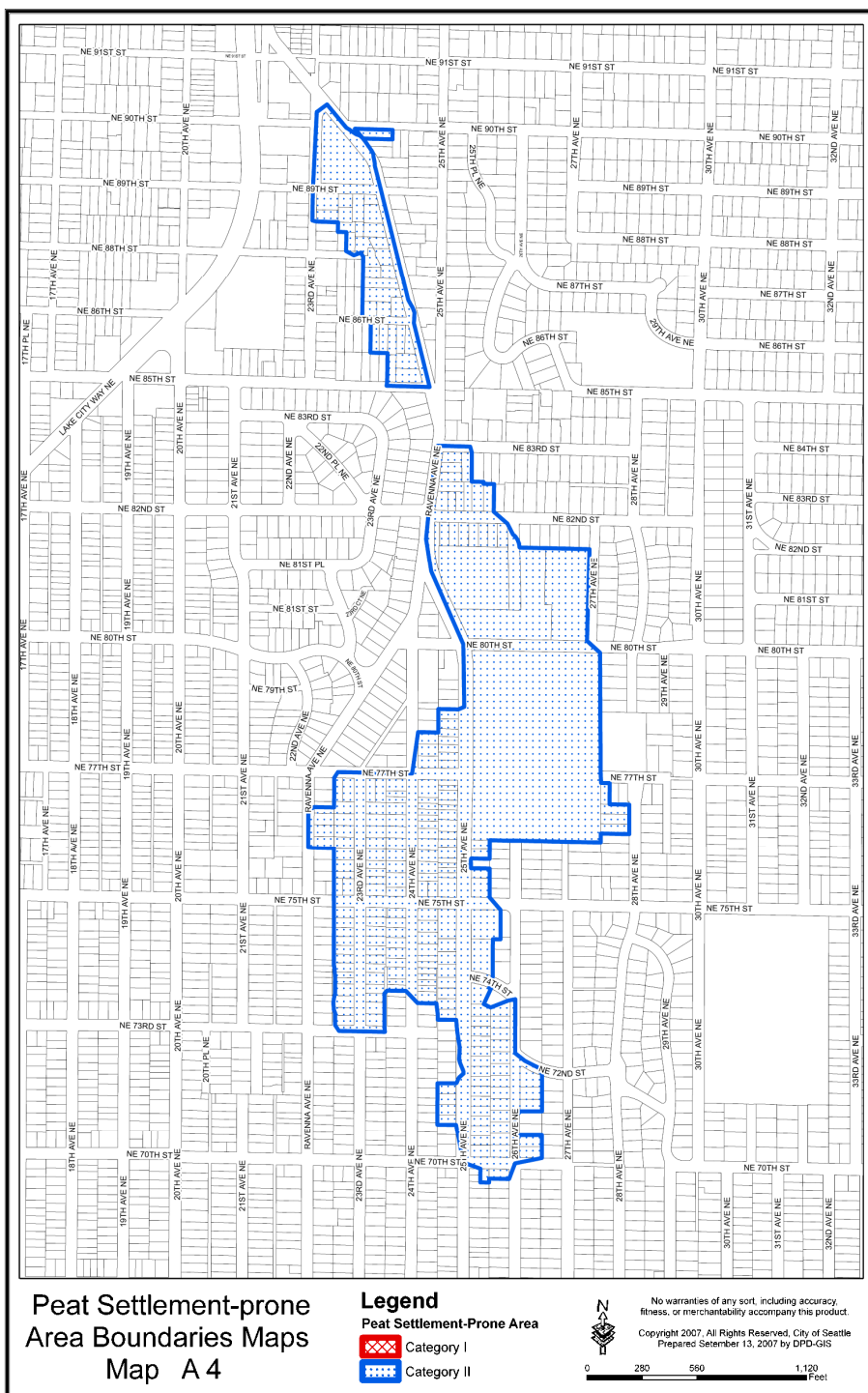
In any case where the provisions of this chapter conflict with the provisions of the underlying zoning or the Seattle Shoreline Master Program [\[14\]](#), the provisions of this chapter apply. For purposes of this chapter, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neutral genders.

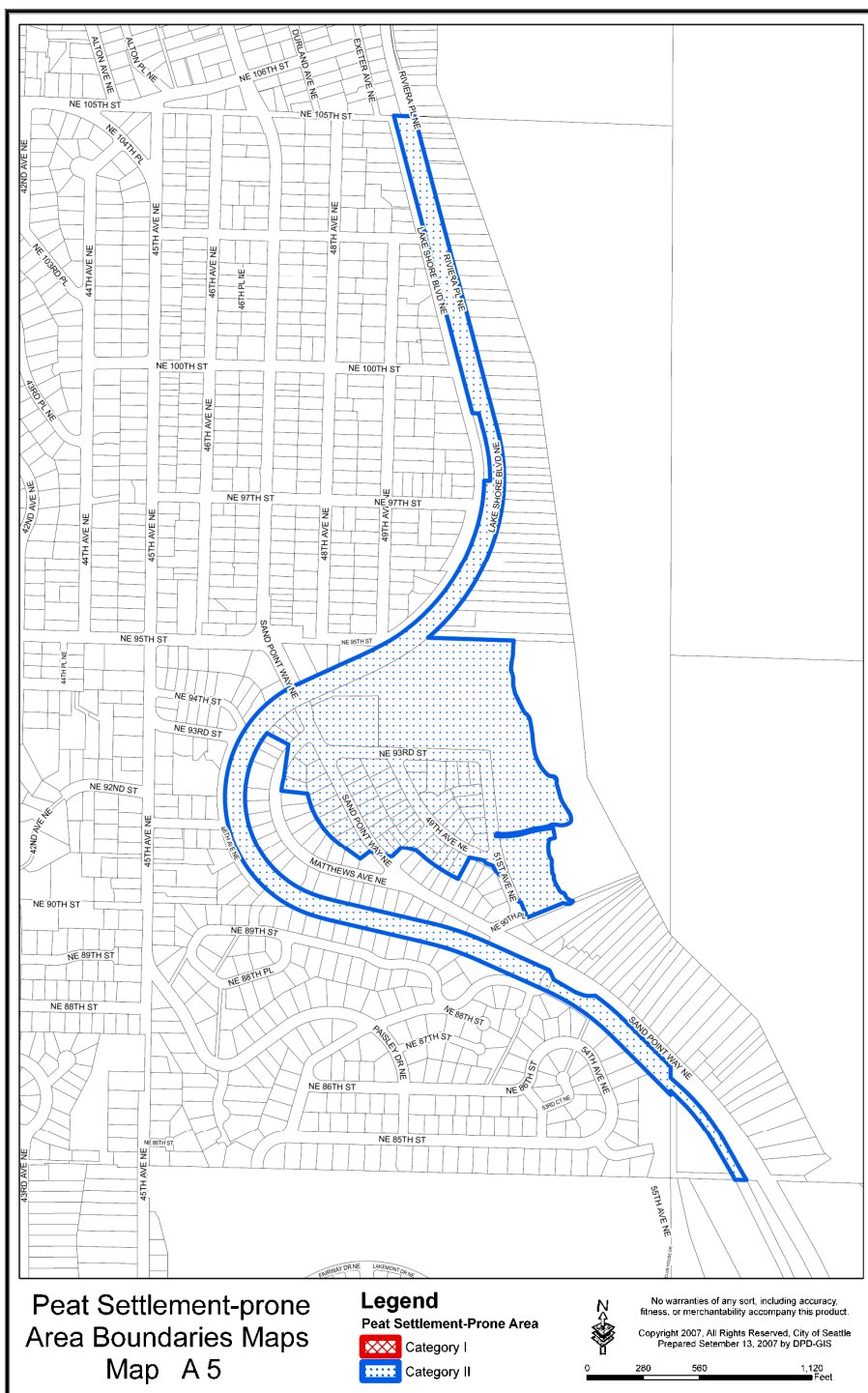
(Ord. 122050 § 1, 2006; Ord. 116253 § 1(part), 1992.)

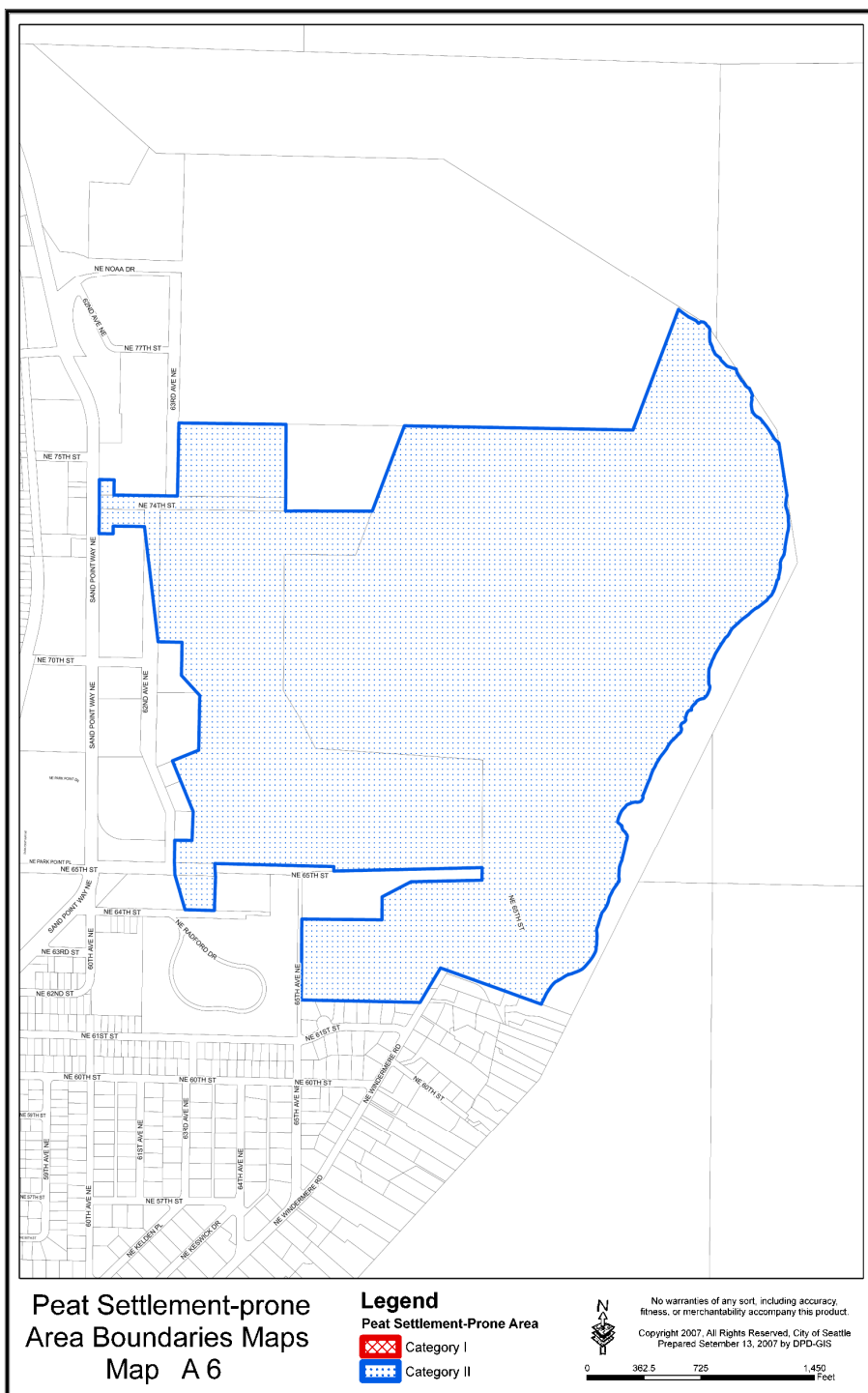




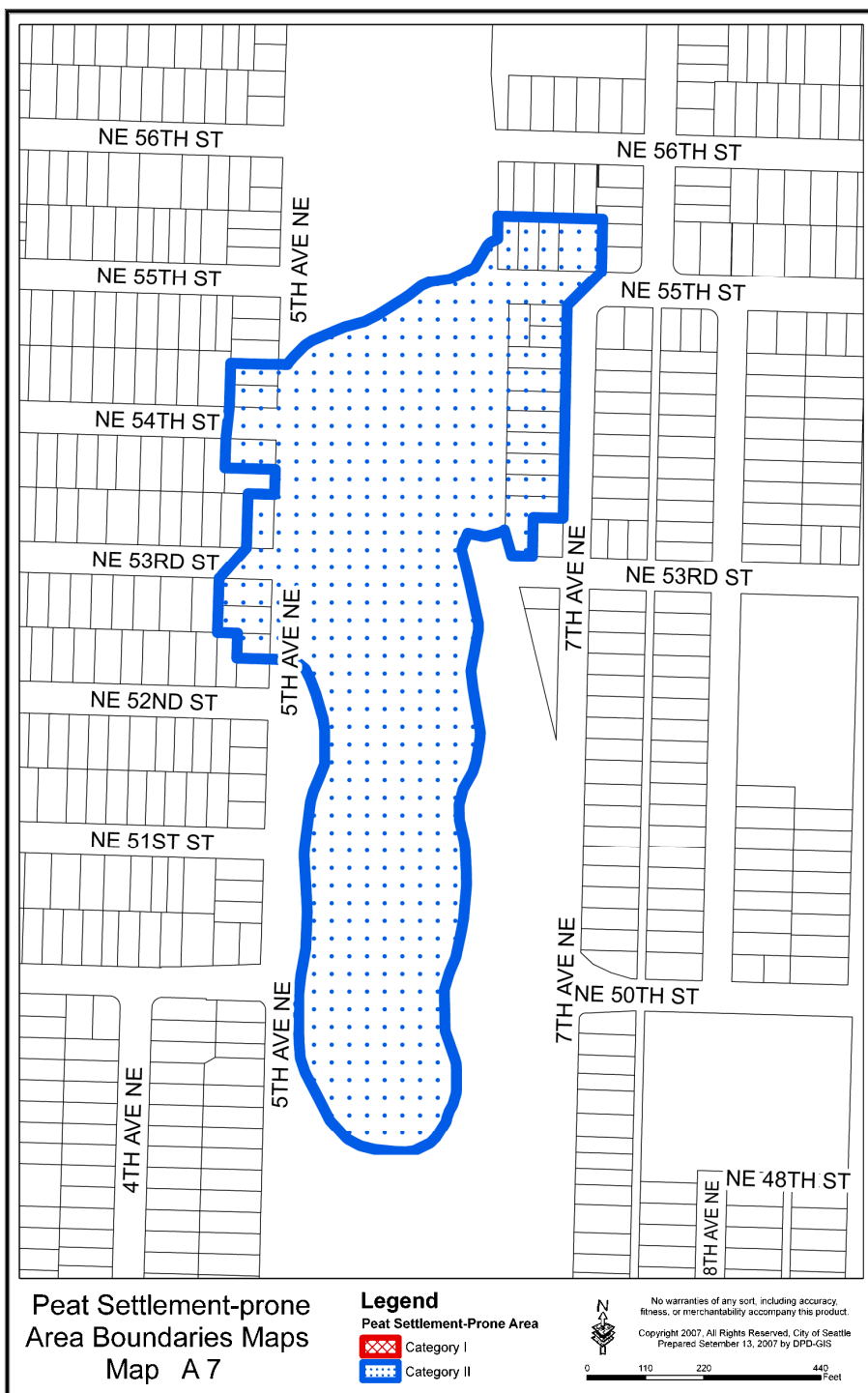


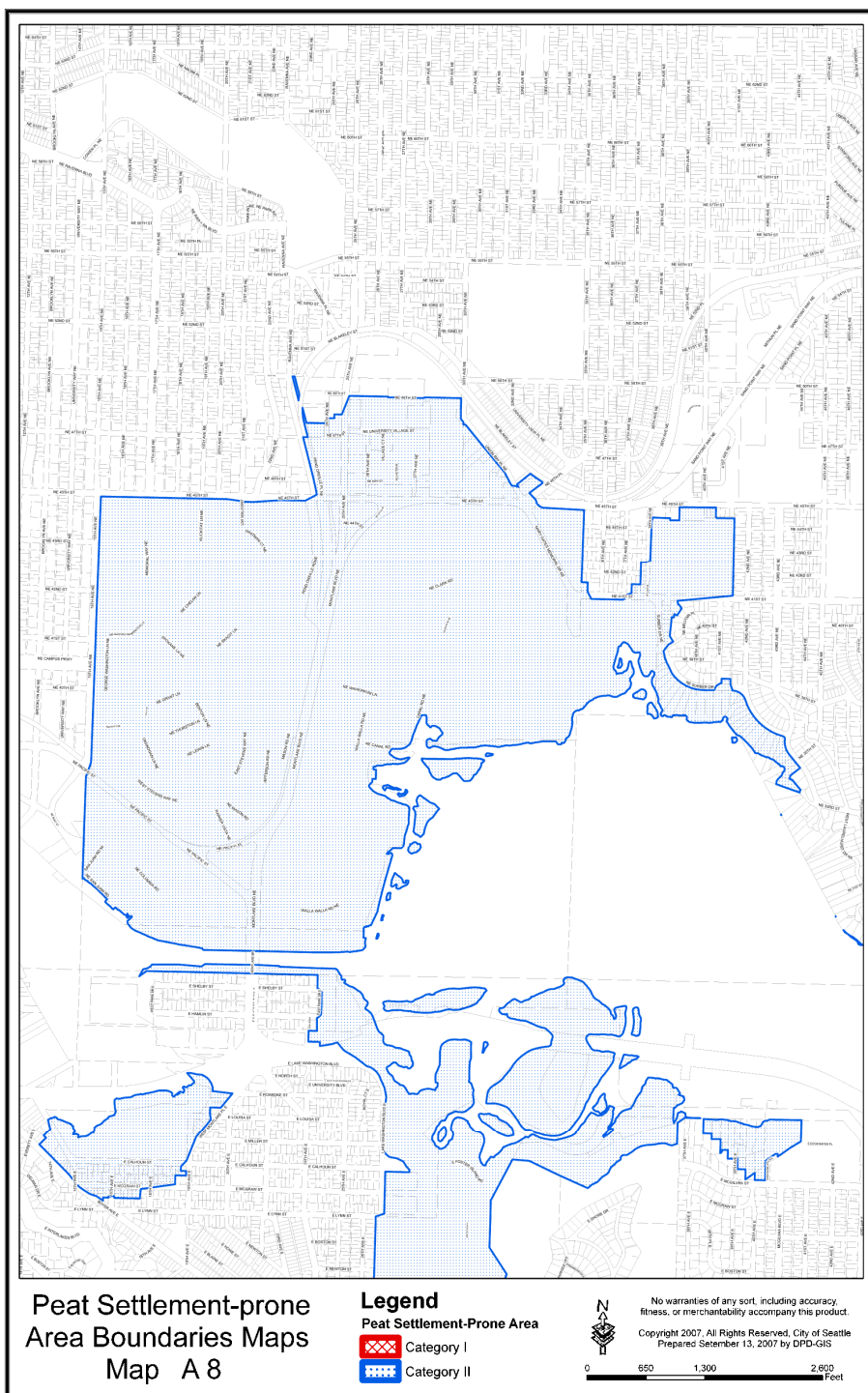


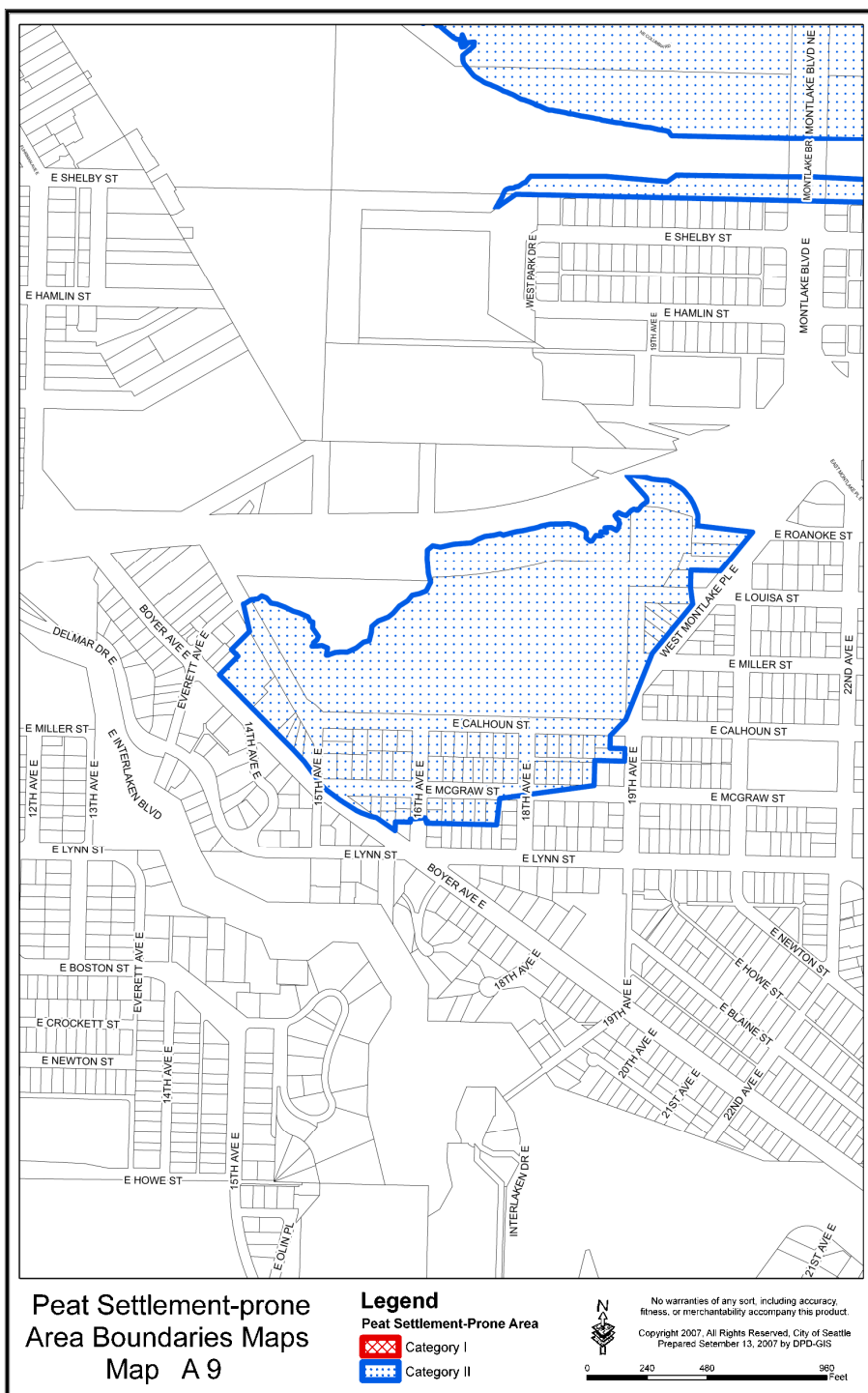


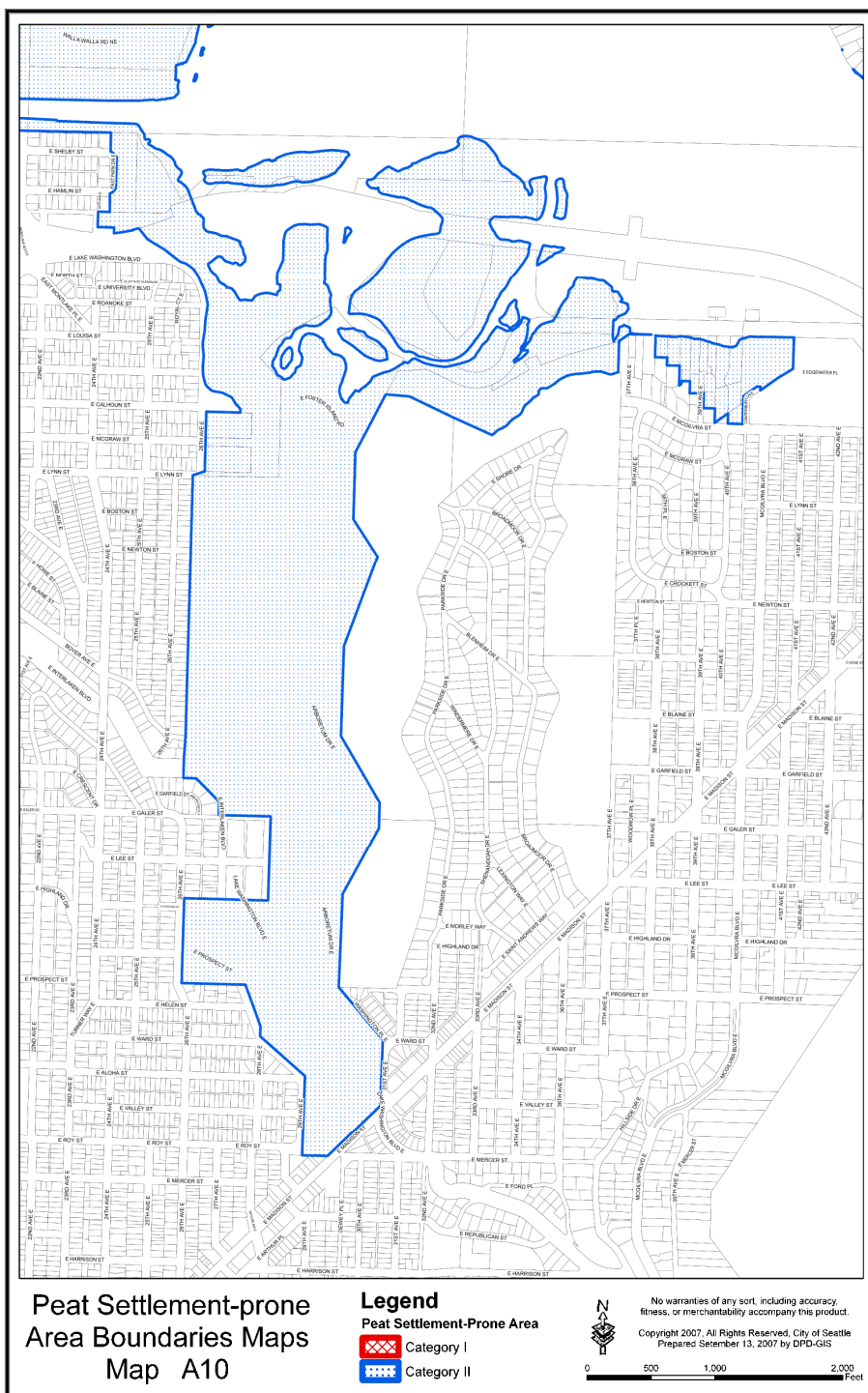




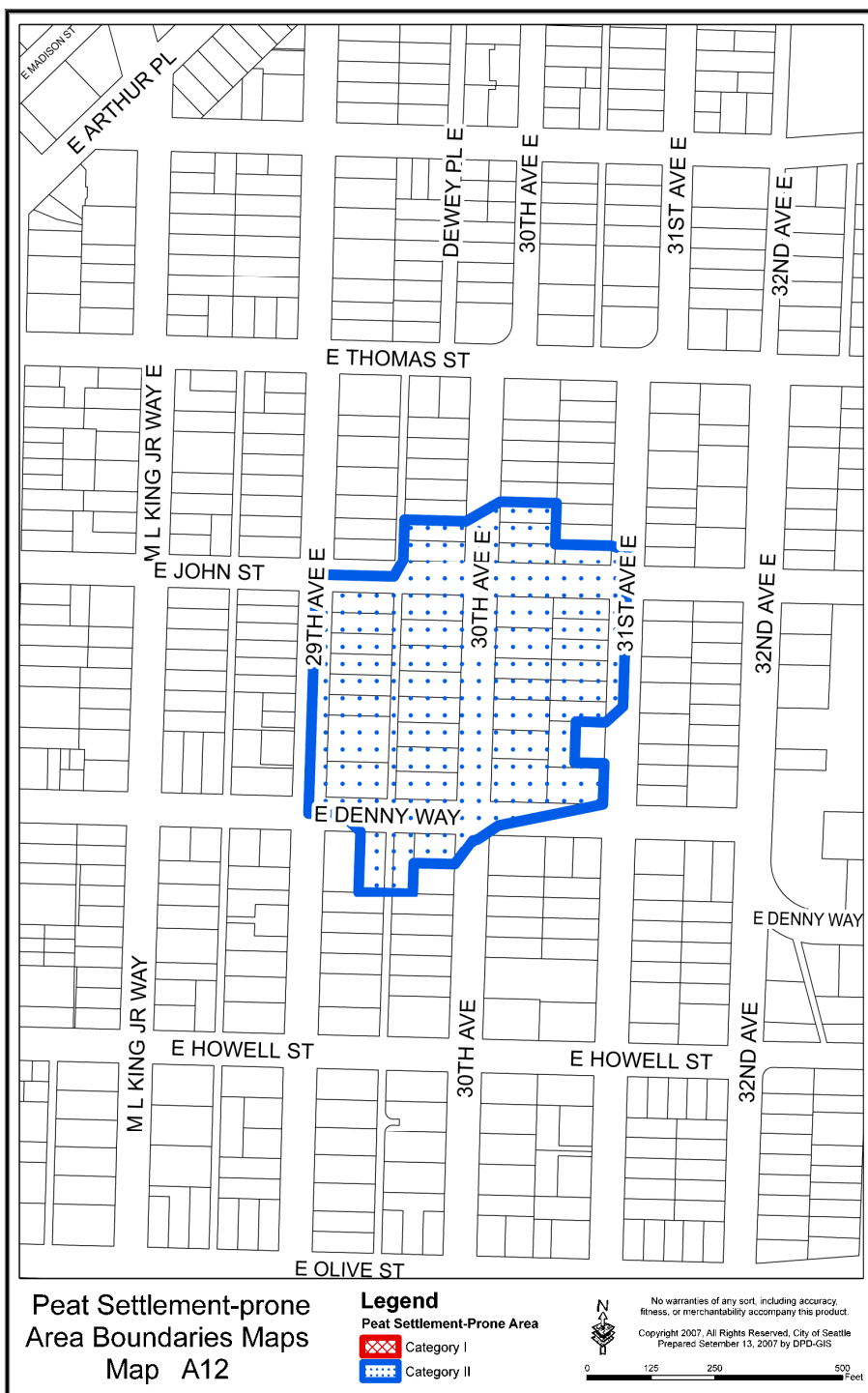


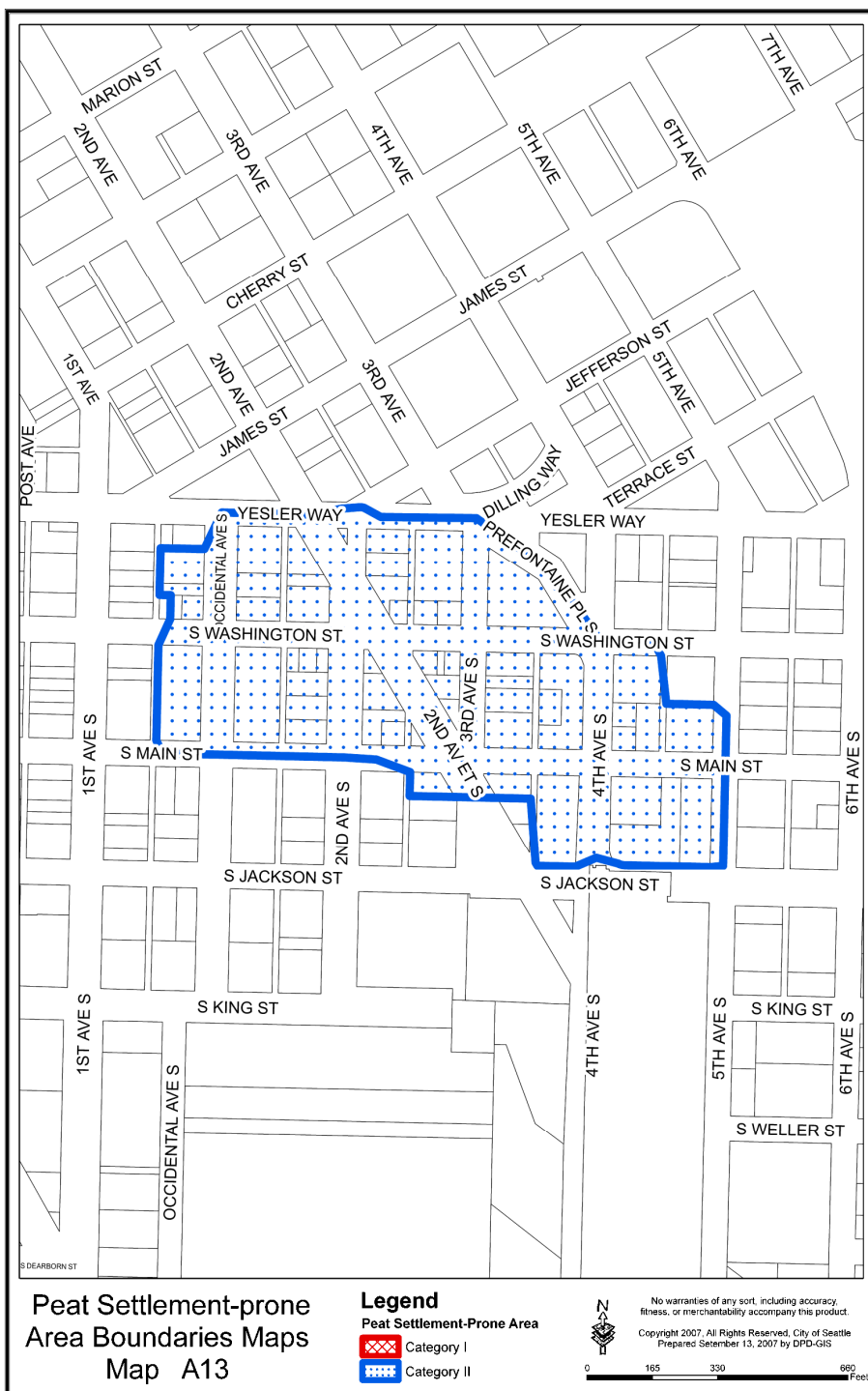




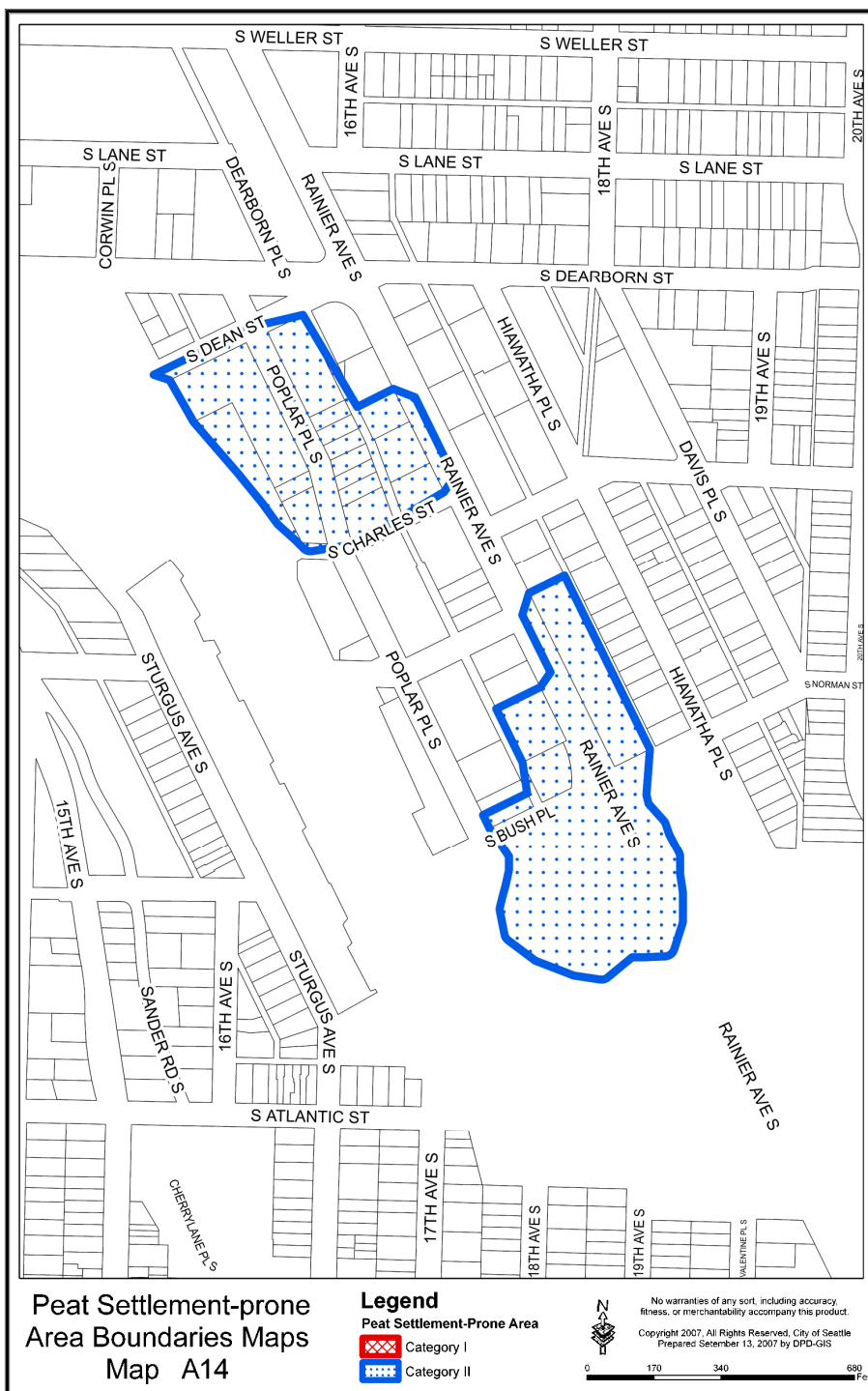




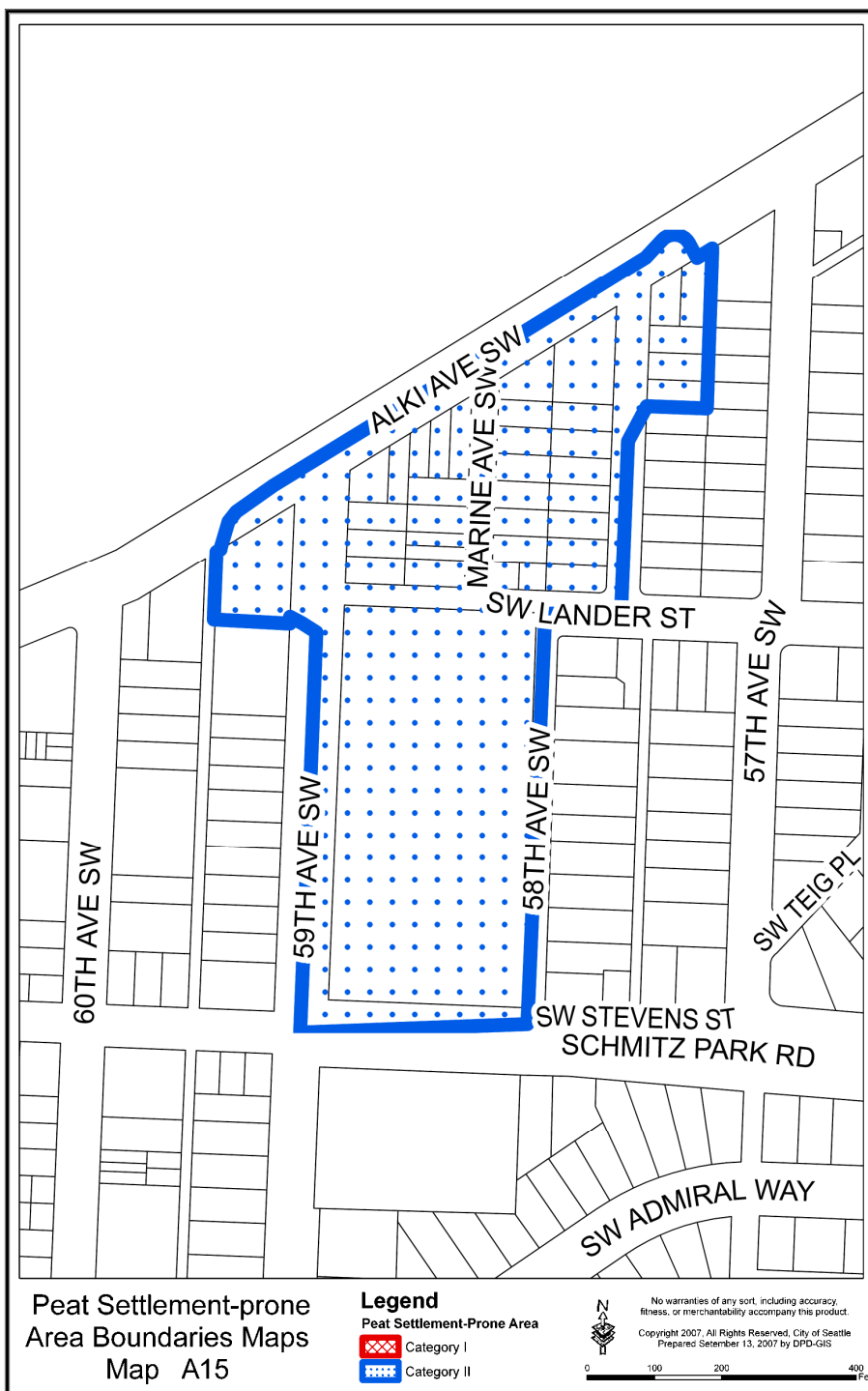


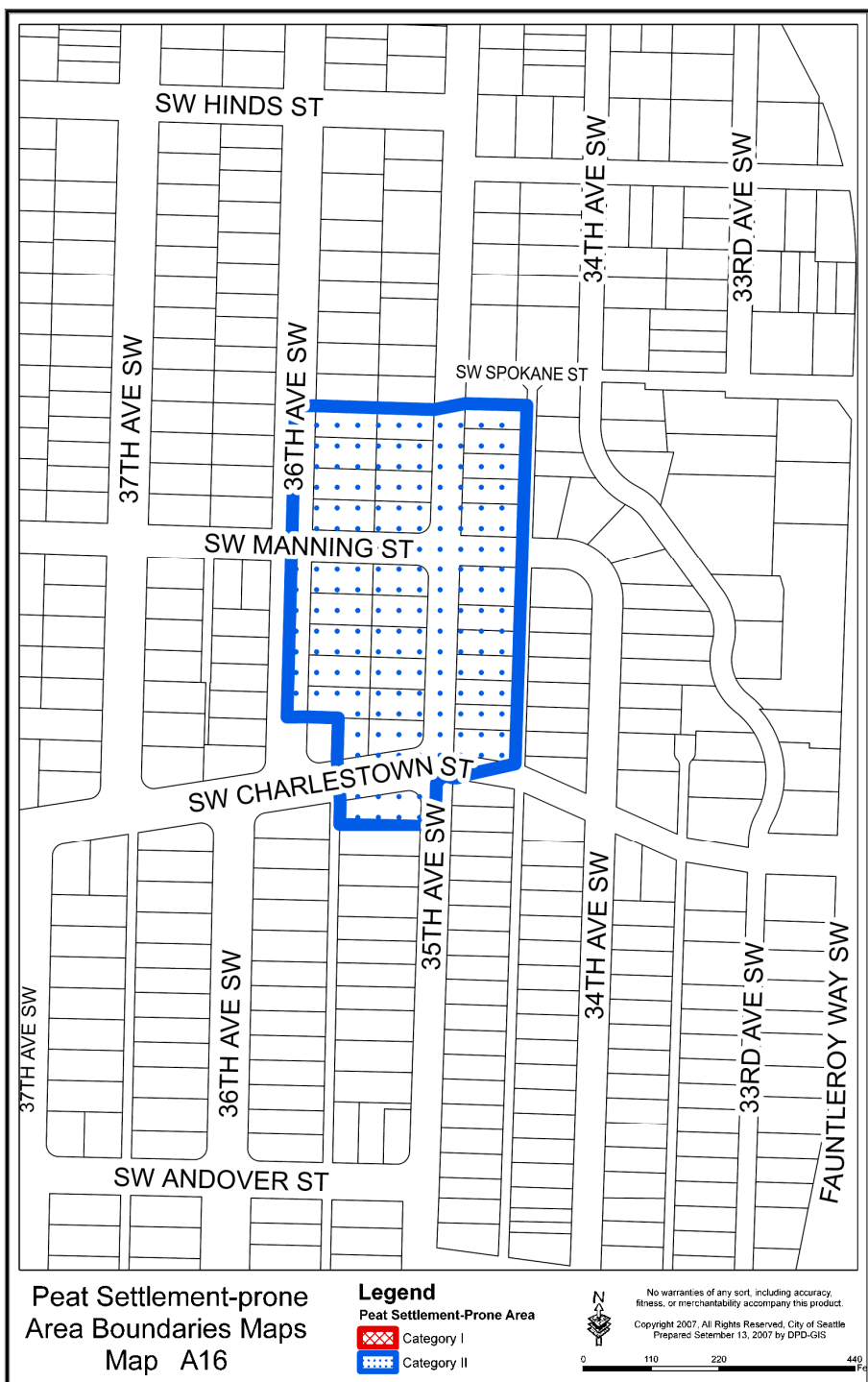


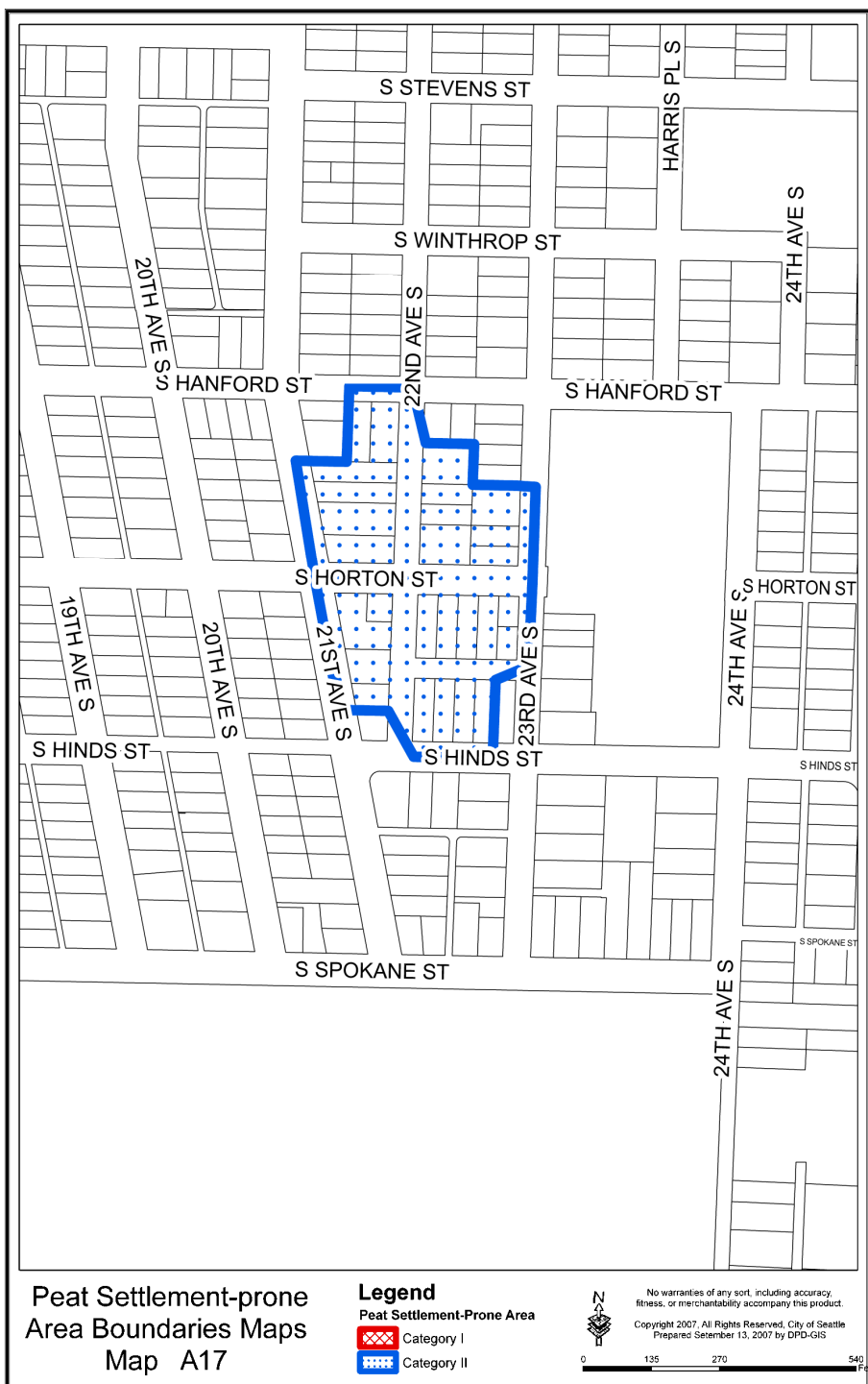


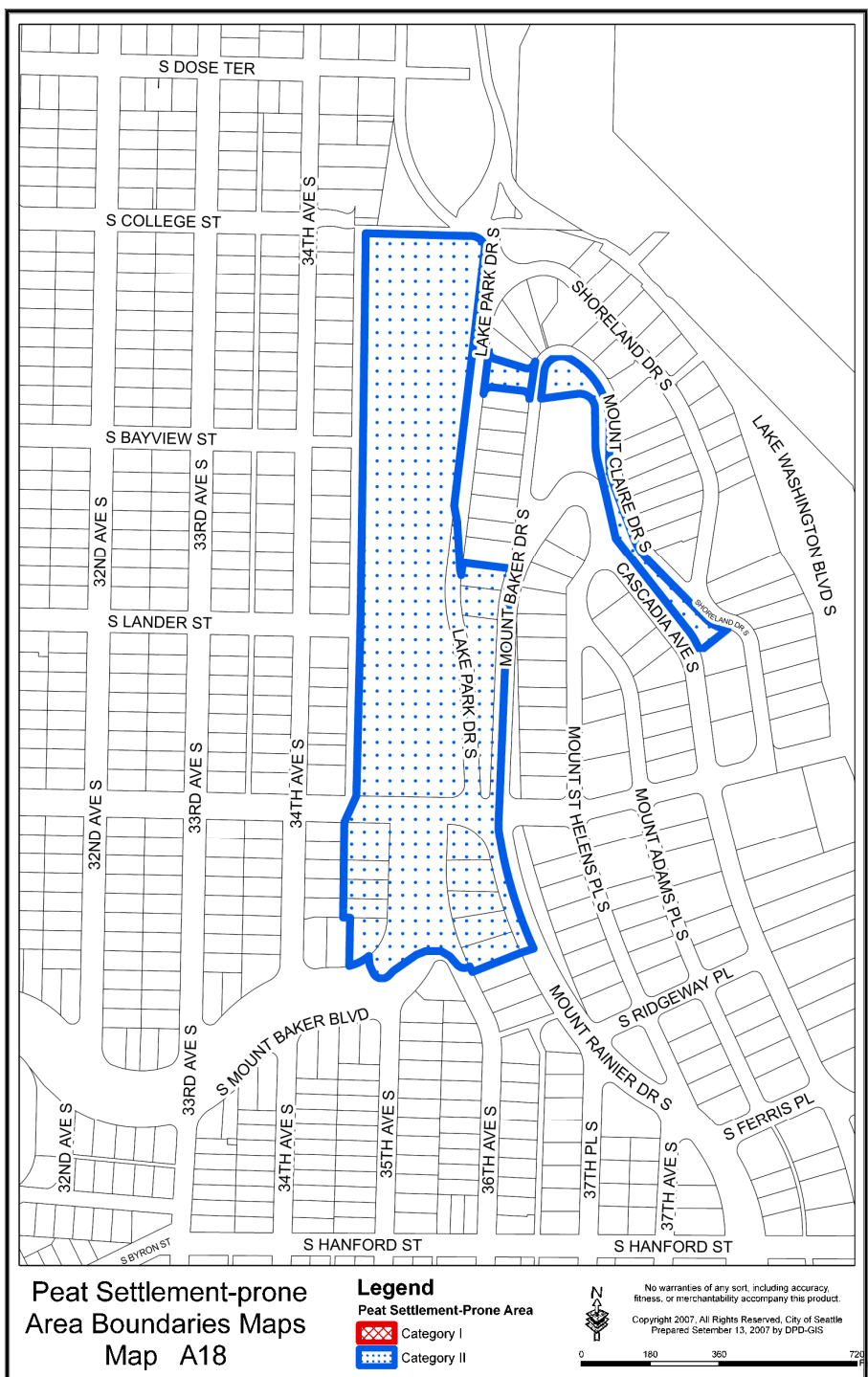


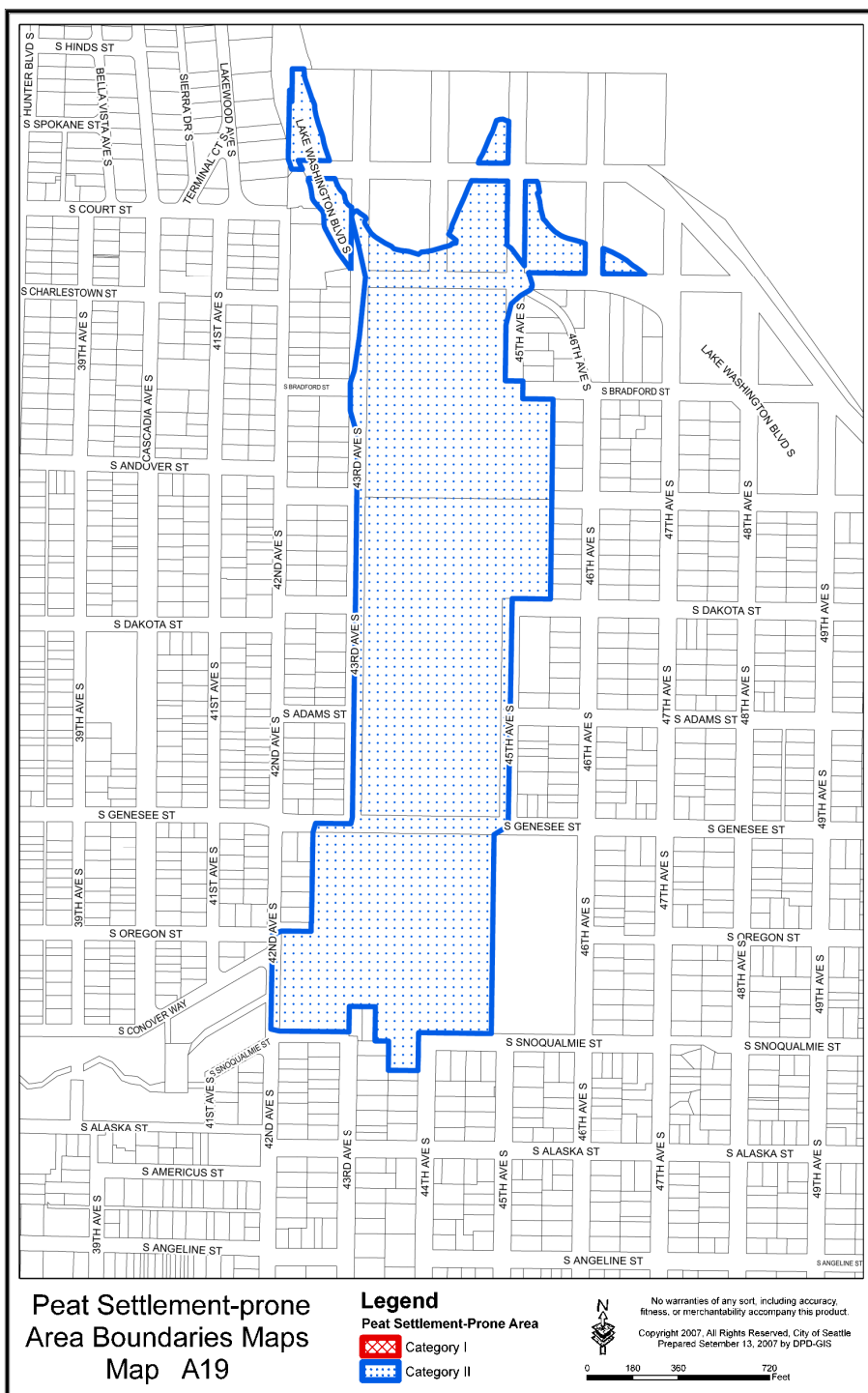


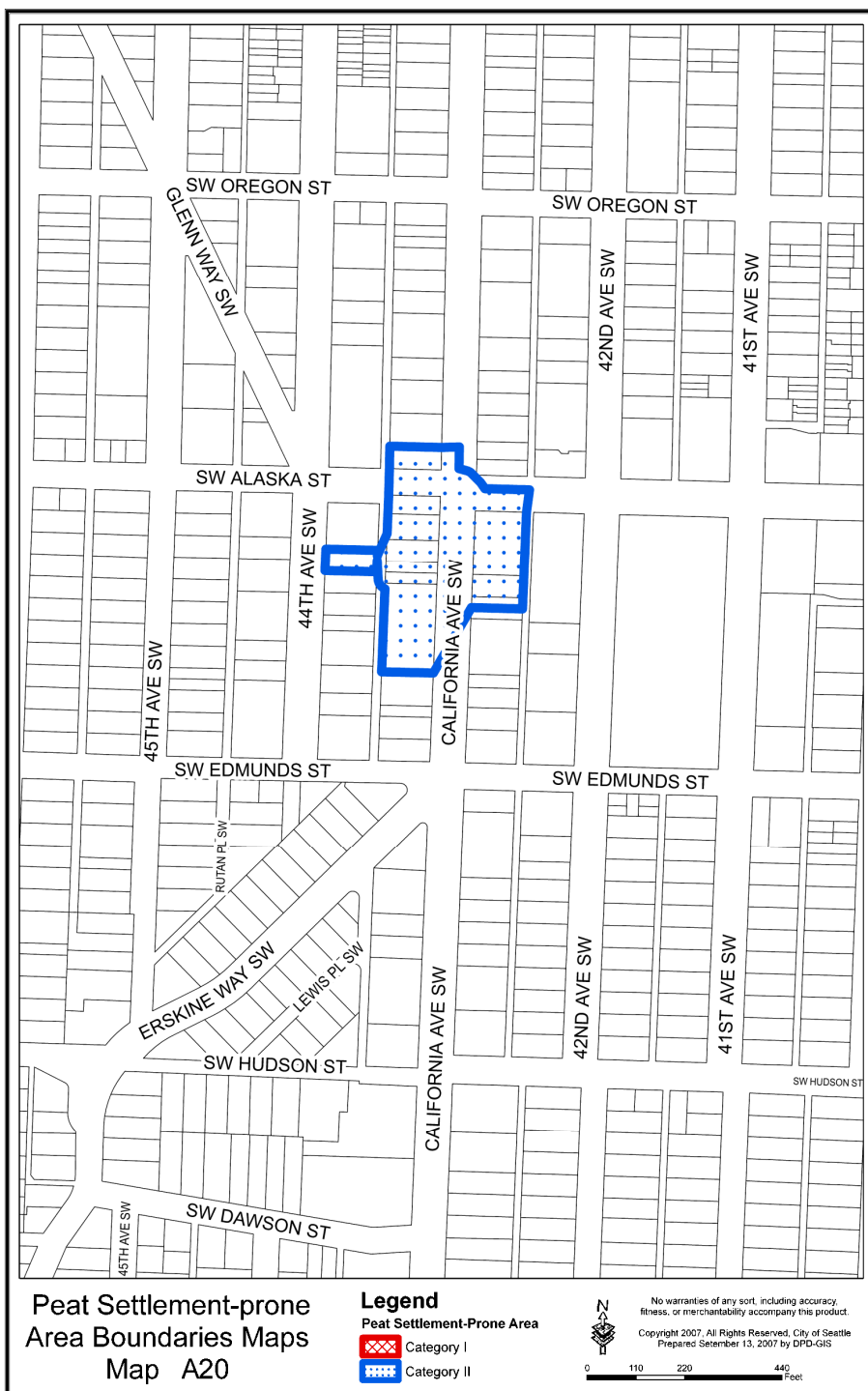


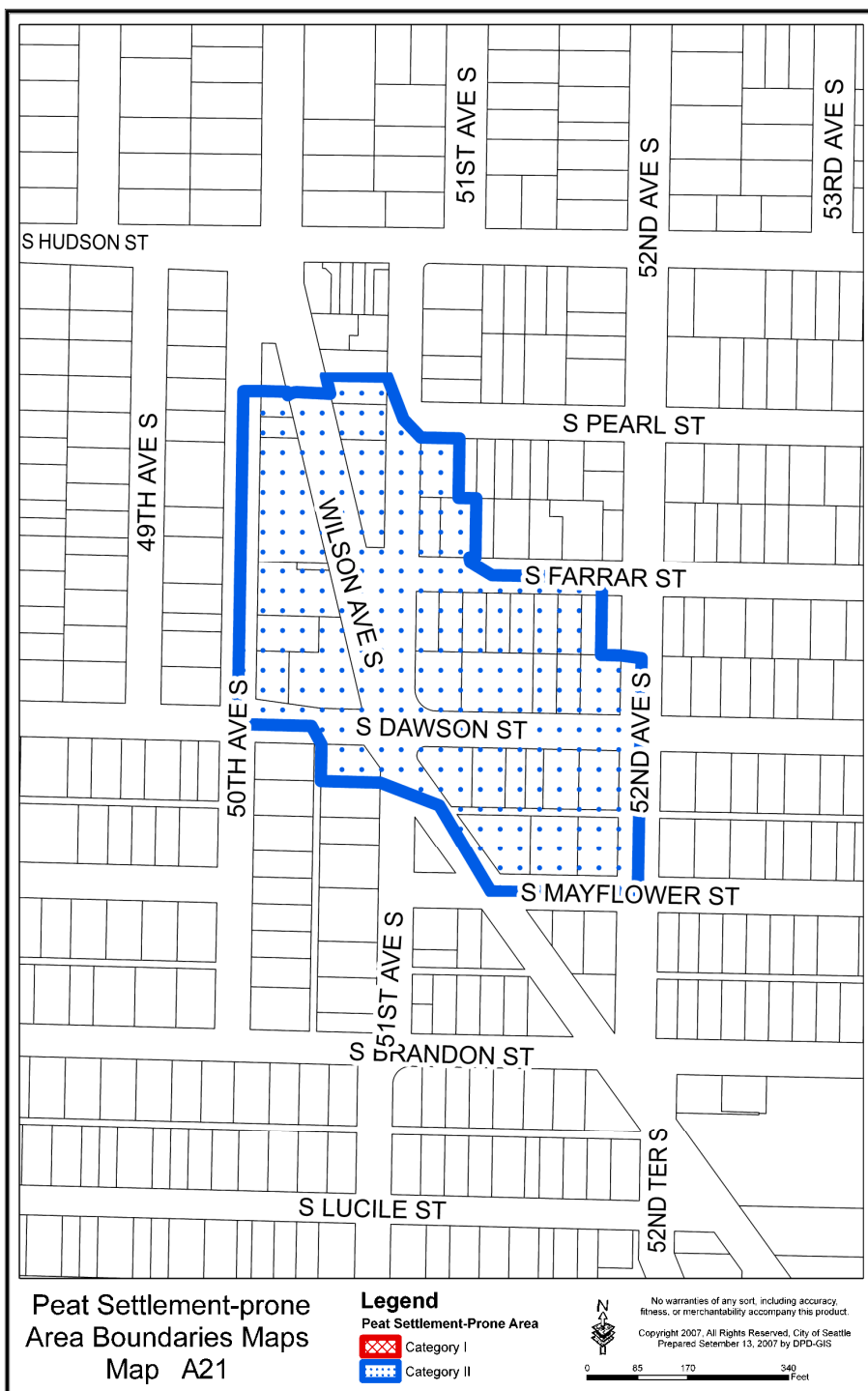


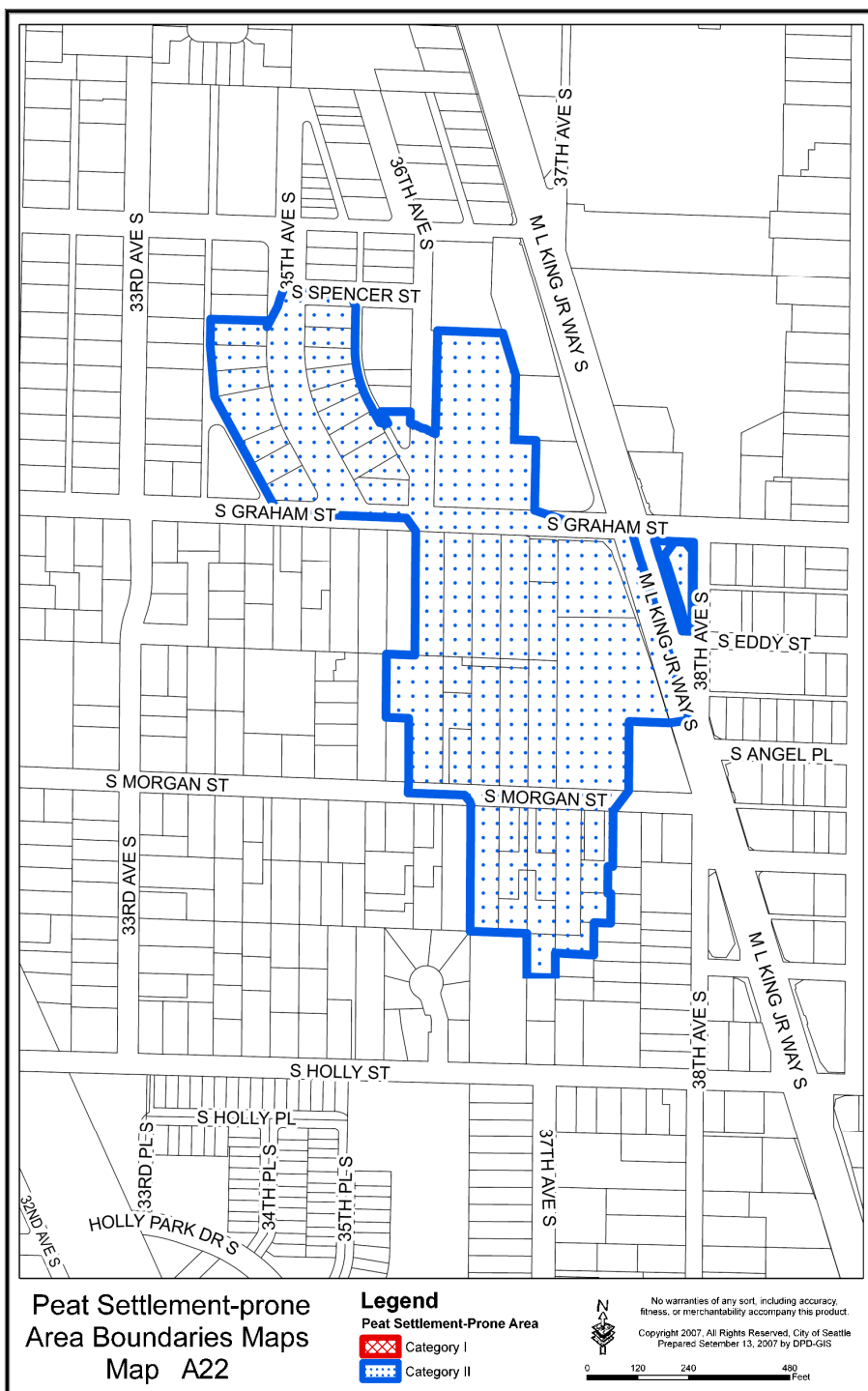




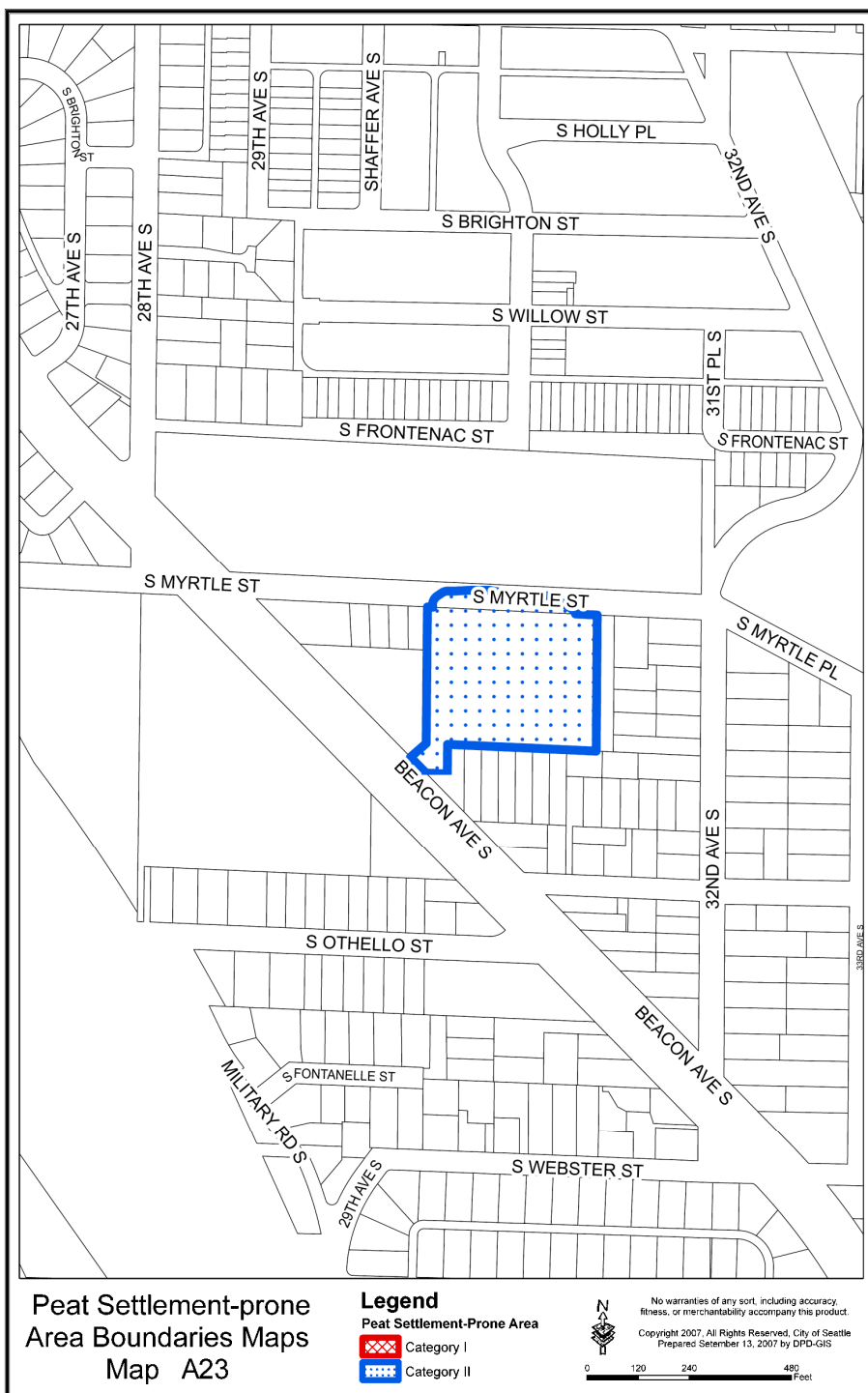


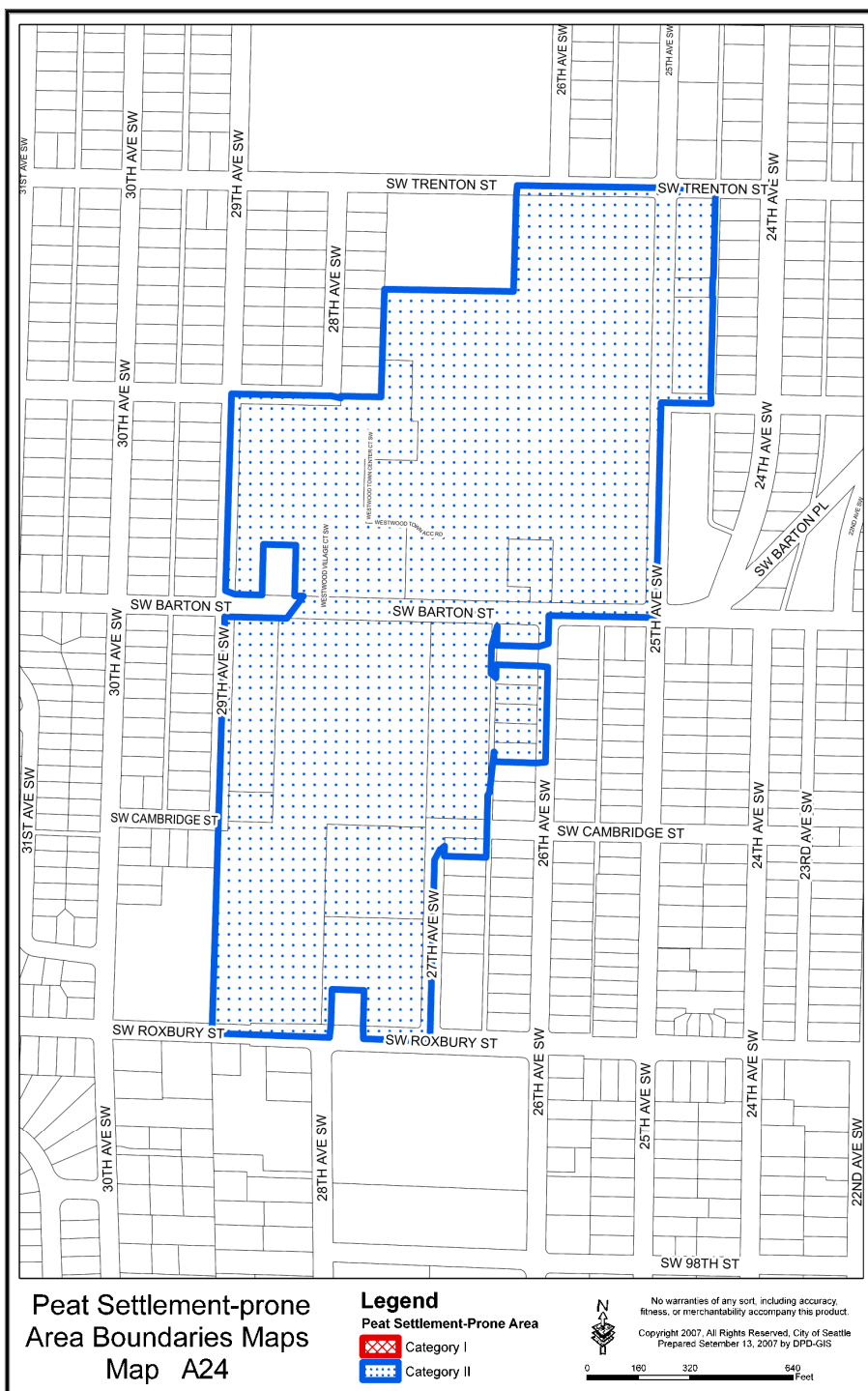


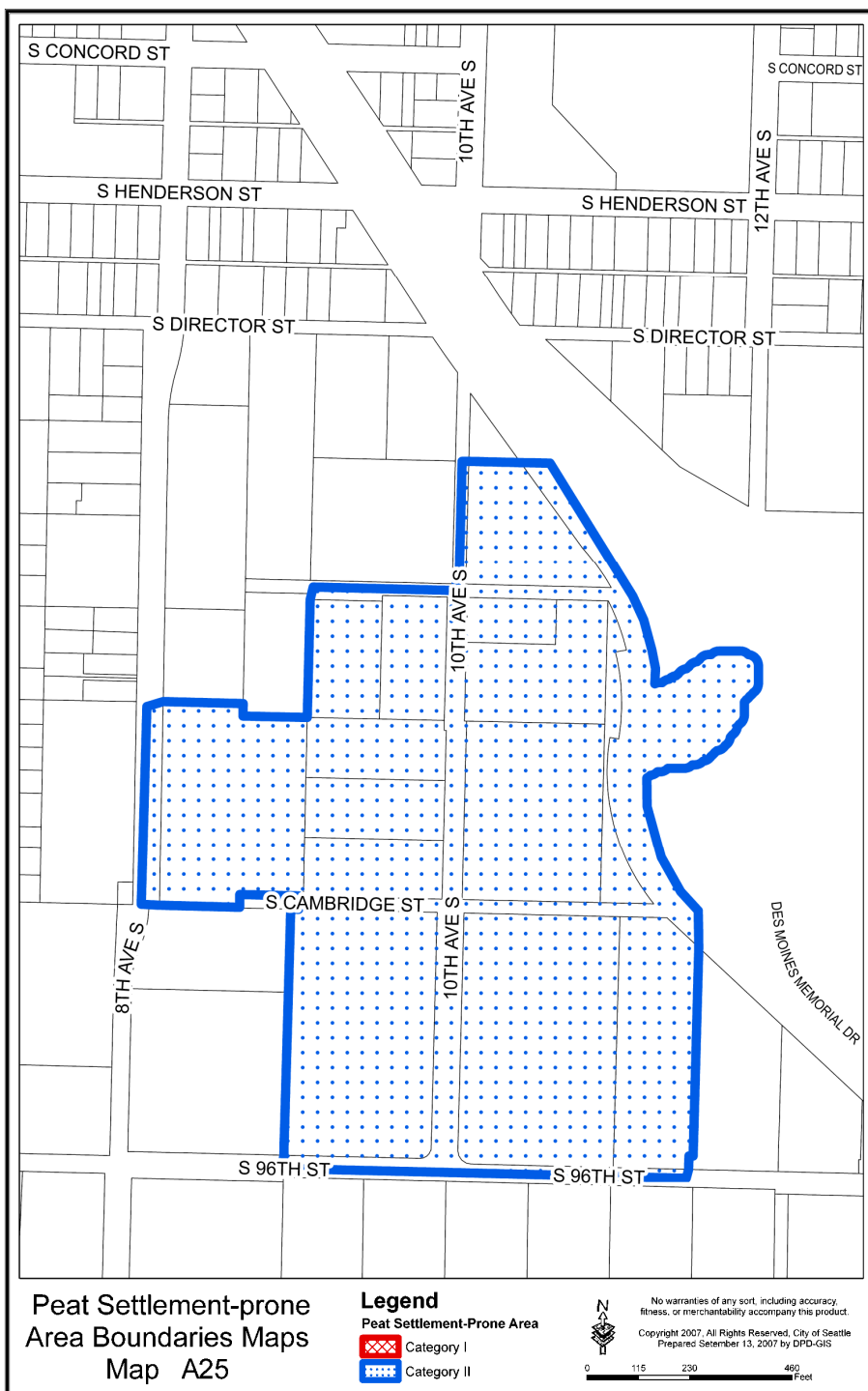


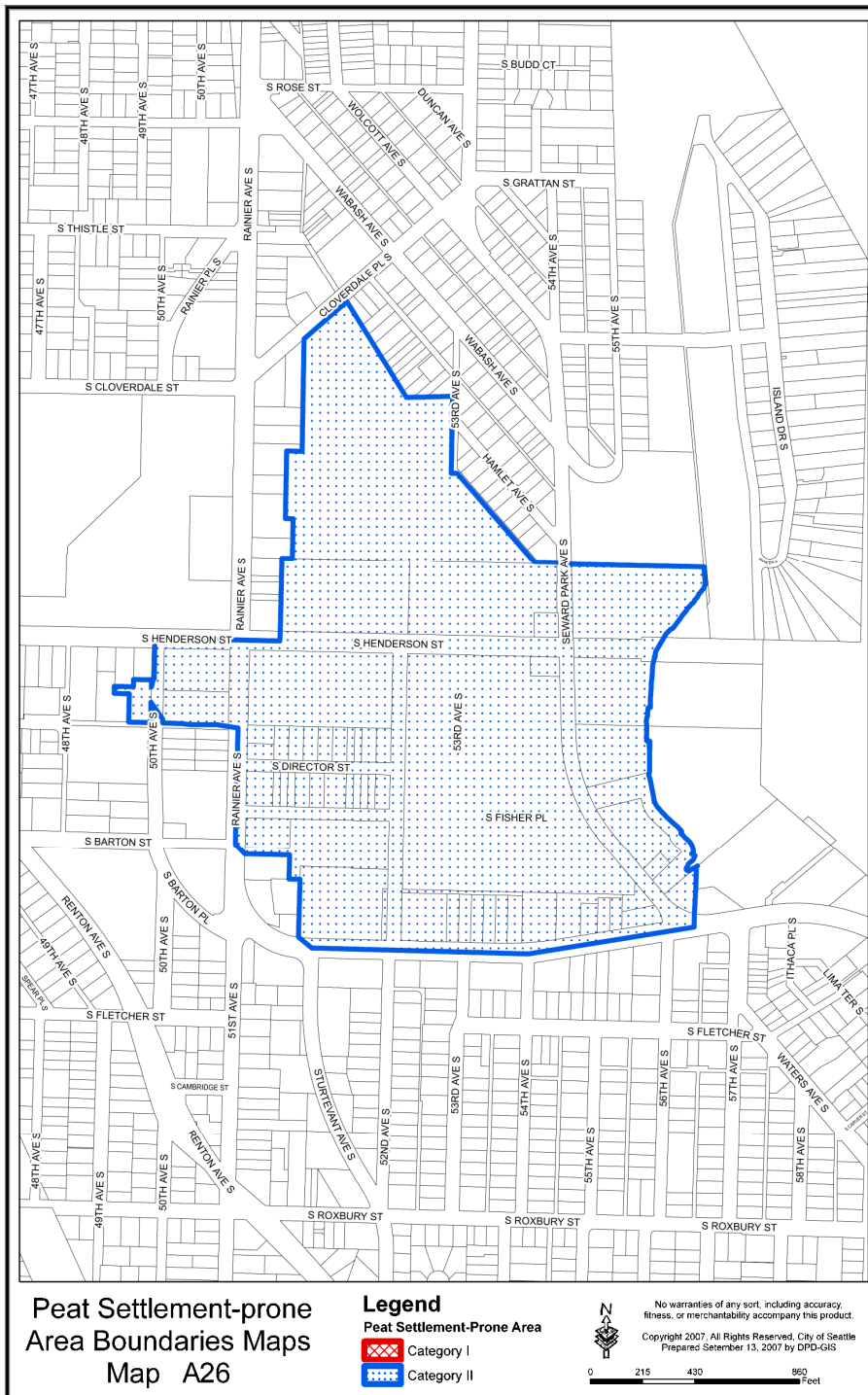












Footnotes:

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**Editor's note**—Provisions of the Seattle Shoreline Master Program are set out at Chapter 23.60 of this Code.

