

EDMONDS ENVIRONMENTAL COUNCIL



PRESS RELEASE

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EDMONDS ENVIRONMENTAL COUNCIL CALLS ON EDMONDS CITY COUNCIL TO FOLLOW “BEST AVAILABLE SCIENCE” IN CRITICAL AREA ORDINANCE UPDATE

The Edmonds Environmental Council (EEC) has consistently encouraged the City of Edmonds to align its critical area regulations with Washington State Laws that require Cities to manage critical areas in accordance with the State’s Growth Management Act (GMA) (Chapter 36.70A RCW). And now, as part of the City’s Critical Area Ordinance update process, the EEC seeks to underscore that limiting or conditioning new development as well as establishing essential protective regulations for critical areas, when supported by the best available science, is a requirement of the GMA. In instances of scientific uncertainty where potential harm is involved, the Washington Administrative Code (WAC) 365-195-920 calls for the ‘Precautionary Principle’ in which “development and land use activities are strictly limited until the uncertainty is sufficiently resolved.”

Although members of the EEC were invited and did collaborate with City staff in a several-month process of updating the Critical Area Ordinance, the exemplary civic process was undermined by a last-minute revision by the City’s contract attorney to the Critical Aquifer Recharge Area (CARA) chapter that the EEC and the Olympic View Water District do not support. The revision results in a reduced level of protection for the Deer Creek aquifer which provides drinking water for southern Edmonds, Woodway, and Esperance. This revision increases the risk of contaminating the Deer Creek aquifer with per- and polyfluoroalkyl substances (PFAS) that have already been detected at high levels in Edmonds’ stormwater.

To assist the Council in its decision-making, EEC has compiled the scientific publications and agency documents -- the “Best Available Science” -- applicable to protecting* the Deer Creek drinking water aquifer and posted them for City Council (and public) review at:

<https://edmondsenvironmentalcouncil.org/critical-areas-best-available-science/> [*Note that protecting is defined at WAC 365-196-830 as “Preservation of the functions and values of the natural environment, or to **safeguard the public from hazards to health and safety.**”]

This “Best Available Science” review of scientific information and agency guidance reveals that:

- PFAS (Per- and Polyfluoroalkyl Substances) are man-made, persistent chemicals found in many products and can easily leach into our “water environment” with serious consequences to humans and wildlife. They are known as ‘forever chemicals’ because they don't break down and conventional stormwater treatments such as rain gardens and filtering are ineffective in removing most of them.
- Drinking water is the principal source of PFAS getting into humans causing cancers, immune issues, thyroid problems, and developmental effects even at minute PFAS levels. The federal government in 2024 established a 4 parts-per-trillion limit in drinking water for only two of the many PFAS compounds, and stormwater in Edmonds was found to be 8-times greater than that limit in 2024. Scientific research is ongoing on environmental effects of additional PFAS compounds that are not easily or completely removed from stormwater even with advanced technologies.
- Prestigious scientific institutions, including the National Academy of Sciences, and state and federal agencies have called for prevention (i.e., source and conveyance control) of PFAS contamination of drinking water due to its serious human health effects. Thus, Edmonds should not be allowing underground injection (UIC wells) that concentrate PFAS into the groundwater that ‘feeds’ the Deer Creek drinking water aquifer.

However, the City’s contract attorney is advising the City Council to ‘exempt’ new development from ‘required’ protective regulations that would prohibit injection of potentially contaminated stormwater into the Deer Creek drinking water aquifer in order to reduce costs of new development. The contract attorney is advising the City Council that this exemption is necessary to avoid a potential ‘takings’ lawsuit since portions of the Deer Creek CARA lack City owned stormwater pipes that new development could otherwise use (and avoid costs) to transport stormwater away from the aquifer.

The EEC believes additional legal considerations may be relevant to the City Council’s deliberations, including:

- U.S. Supreme Court rulings on ‘takings’ where public health and safety regulations are involved. A legal review of regulatory ‘takings’ presented in the Cornell School of Law website specifically addresses when “a regulation adopted under the police power to protect the public health, safety, or welfare is not a taking” (See: <https://www.law.cornell.edu/wex/taking#:~:text=The%20power%20of%20the%20government%20throug,h%20the,the%20point%20of%20it%20constituting%20a%20taking>)

- The State Attorney General’s Office, in October 2024, issuing an Advisory Memorandum for decision-makers that discusses “If it [a regulation] acts more to prevent a public harm, it is probably not a taking” (see: <https://agportal-s3bucket.s3.us-west-2.amazonaws.com/uploadedfiles/October%202024%20AGO%20Takings%20Guidance%20FINAL.pdf?VersionId=OVi41YoylBtea3QLJvLtzwsc7ID3p0Cj>)
- Concerns that allowing UIC wells in a drinking water aquifer raises issues regarding compliance with State and federal laws on protecting public health, and specifically on State law requiring use of “Best Available Science” in protecting critical areas. The EEC believes that the potential legal risks associated with public health protections warrant equal consideration.”
- Concerns that lack of nearby City stormwater pipes be treated differently than lack of nearby sewer pipe instances where developers are required to absorb costs for pipes and sewage pumps necessary for new development.

The EEC urges the City Council to use the Best Available Science to update the Critical Area Ordinance including the prohibition on UIC wells in the Deer Creek CARA in accordance with State Law requirements for critical areas that “**safeguard the public from hazards to health and safety**”. If new information becomes available on effective methods to completely remove toxic chemicals such as PFAS from stormwater in CARAs, the critical area regulations can be revised accordingly at that time.

The EEC also asks citizens who raised concerns about the Deer Creek drinking water aquifer to send their concerns to council@edmondswa.gov and/or attend the City Council’s January 6 Public Hearing on the Critical Area Update.

The Edmonds Environmental Council (EEC) is a 501(c)(3) non-profit organization that seeks to bring balance between needed development, environmental protection, and compliance with State laws. The EEC was formed in response to a growing need for “informed” voices to help educate residents and City officials on the perils of ignoring the human and natural environment.

Membership and Donor information can be found on the EEC's website at: <https://edmondsenvironmentalcouncil.org/>.