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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

EMERGENCY ORDINANCE NO. 04-024

RELATING TO CRITICAL AREAS REGULATIONS
AMENDING SECTIONS 30.62.200, 30.62.345, 30.62.350, 30.62.370, AND
30.91C.340 SCC TO CORRECT ERRORS CREATED DURING THE ADOPTION
OF THE UNIFIED DEVELOPMENT CODE; AND
DECLARING AN EMERGENCY

WHEREAS, on December 9, 2002, the County adopted Ordinance No. 02-064, known as the Unified Development Code (UDC) as Title 30 SCC to consolidate and streamline county land use and development codes and to eliminate duplication, inconsistency, and ambiguity therein; and

WHEREAS, the Growth Management Act (Ch. 36.70A RCW), requires that the County protect the functions and values of critical areas, which the County accomplishes through various means, including the adoption of development regulations. Prior to the adoption of the UDC, those development regulations for certain types of critical areas were set forth in Chapter 32.10 SCC. Those regulations are presently set forth in the UDC at Sections 30.62.005 through .400 SCC; and

WHEREAS, upon adoption of the UDC, the Council did not intend to effectuate significant substantive changes to the development regulations providing protection to critical areas; and

WHEREAS, certain errors exist in Ordinance No. 02-064 that have resulted in unintended changes to the critical areas regulations, which the Council now desires to repeal and replace with the code provisions that were in effect immediately prior to the adoption of Ordinance No. 02-064; and

WHEREAS, pursuant to Section 2.120 of the Snohomish County Charter, the Council finds that this ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions; and

WHEREAS, the Council is authorized to enact emergency legislation after holding a public hearing in accordance with Section 30.73.090 SCC in order to remedy the unintentional changes made to the critical areas regulations;

BE IT ORDAINED:

Section 1. The Snohomish County Council makes the following findings of fact:

A. The recitals set forth above are incorporated herein by this reference.

B. The Council has provided appropriate notice of the public hearing on this ordinance as required by SCC 30.73.090(4).

C. Based upon the foregoing, the County Council declares that an emergency exists and that this ordinance shall take effect immediately upon adoption.

Section 2. Section 30.62.200, added by Ordinance No. 02-064 on December 9, 2002, which became effective on February 1, 2003, is hereby amended to read:

30.62.200 Erosion hazard areas.

(1) Development activity proposed in erosion hazard areas as defined in ((this)) chapter 30.91 SCC shall be protected by use of best management practices found in the Snohomish County Drainage Manual adopted pursuant to chapter 30.63A SCC.

(2) The director may approve erosion control measures which differ from those required by SCC 30.62.200(1) if the applicant submits a geotechnical report which technically demonstrates and visually illustrates that the alternative measures provide protection which is greater than or equal to that provided by the measures required in SCC 30.62.200(1).

(3) All portions of erosion hazard areas on the site which are undisturbed by development activities shall be designated as native growth protection areas in accordance with SCC 30.62.320.

Section 3. Section 30.62.345, added by Ordinance No. 02-064 on December 9, 2002, which became effective on February 1, 2003, is hereby amended to read:

30.62.345 Mitigation plan requirements.

(1) Unless otherwise provided by this chapter, mitigation shall be required for loss of area or functional value of wetlands, streams, and buffers regulated under this chapter. When mitigation is required by this chapter, it shall address

restoration, rehabilitation, and compensation as set forth below. Mitigation may be provided through the use of a wetland mitigation bank approved pursuant to SCC 30.62.375 which may include deviations from the requirements of this section.

(a) Restoration is required when a wetland, stream, or buffer regulated under this chapter has been altered prior to project approval unless the alteration was authorized by law; or when streams, wetlands and/or buffers are temporarily affected by construction or any other temporary phase of a project;

(b) Mitigation is required when a wetland, stream, or buffer regulated under this chapter is permanently altered as a result of project approval or activity;

(c) Wetland (~~acreage~~) function and values shall be replaced in kind at a minimum ratio of one (replacement value) to one (existing value) (~~on or off site~~);

(d) On-site mitigation is preferred so as to assure, to the greatest extent feasible, that the plan results in mitigation for direct impacts resulting from the alteration;

(e) Off-site mitigation will be used only in those situations where appropriate, adequate, on-site mitigation is not feasible to achieve. When off-site mitigation is allowed, it must occur within the same sub-drainage basin as the project impact;

(f) Mitigation shall be completed prior to granting of temporary or final occupancy, or the completion or final approval of any development activity for which mitigation measures have been required.

(2) The mitigation plan shall:

(a) Include a base line study that analyzes the existing functional values of the critical area and buffer, functional values that will be lost, and the system's functional values after mitigation;

(b) Specify how lost functional values will be replaced;

(c) Specify when mitigation will occur relative to project construction and to the requirements of permits required by other jurisdictions;

(d) Include provisions for monitoring the mitigation area on a long-term basis to determine whether the plan was successful;

(e) Include provisions for a bond or a series of bonds to assure that work is completed in accordance with the plan and that restoration or rehabilitation is performed if any portion of the mitigation project fails within three years of implementation. The bonds shall be administered in accordance with chapter 30.84 SCC; and

(f) Address the need for and, when appropriate, determine the width of the buffer adjacent to any altered wetland edge.

(3) The director may allow mitigation plans to be submitted in two phases; a conceptual phase and a detailed plan phase for those projects which require approval by the hearing examiner or those which receive phased administrative, conditional, or preliminary approvals by the department. For all other projects, phasing of mitigation plans is not allowed.

(4) Mitigation plans, including drainage plans, shall be approved prior to any development activity.

(5) To identify plant species which may be approved for mitigation purposes, applicants may refer to the National List of Plant Species that Occur in Wetlands: Northwest (Region 9) Biological Report 88 (F26.9), published by the U.S. Fish and Wildlife Service, May, 1988 or the 1993 Supplement to the List of Plant Species that Occur in Wetlands: Northwest (Region 9) December, 1993. Applicants may propose plant species which are not on these lists. All plant species proposed for mitigation must be approved by the county.

~~((6) When mitigation is required for drainage impacts only, a detailed drainage plan pursuant to chapter 30.63A SCC may be substituted for a mitigation plan. The detailed drainage plan shall not require an acreage replacement value but shall require complete mitigation of all drainage impacts.))~~

Section 4. Section 30.62.350, added by Ordinance No. 02-064 on December 9, 2002, which became effective on February 1, 2003, is hereby amended to read:

30.62.350 Allowed development activities in streams, wetlands, and buffers.

(1) The following development activities may occur in streams, wetlands, and buffers regulated under this chapter, but will require a critical area study which meets the requirements of SCC 30.62.340 and a mitigation plan which meets the requirements of SCC 30.62.345, and the review criteria of SCC 30.62.365. A department pre-approved critical area study performed within five years of a development activity application shall be considered in compliance with this section if after site review it is determined that the existing conditions are not significantly different from those existing at the time of the original study.

(a) Allowed development activities in streams regulated under this chapter are:

- (i) utility lines, hydroelectric power generating facilities and all other public and private utility facilities other than those allowed pursuant to SCC 30.62.360;
- (ii) public and private roadway crossings, other than those allowed pursuant to SCC 30.62.360;
- (iii) bridge construction and culvert installations;
- (iv) bank protection and flood protection, including flow control structures for regional retention/detention systems;
- (v) in-stream fish and/or wildlife habitat enhancement;
- (vi) activities and mitigation authorized by this chapter including wetland mitigation banks, stream restoration, enhancement, and relocation which increases functional value; and
- (vii) stream relocation when a plan is submitted as part of the critical area study which demonstrates that the following criteria are met:

(A) the relocation will improve water quality, fish or wildlife habitat, wetland recharge (if hydrologically connected to a wetland);

(B) the plan must contain and show the following information: a topographic survey showing existing and proposed topography and location of the new stream channel; provisions for filling and revegetating the prior channel, if appropriate;

(C) relocation will maintain or improve hydrologic function;

(D) natural materials and vegetation normally associated with the stream will be utilized;

(E) spawning, rearing, and nesting areas will be created, if applicable;

(F) fish populations will be reestablished, if applicable; and

(G) water flow characteristics compatible with fish habitat areas will be restored; and

(viii) development activities allowed by the county Shoreline Management Master Program in areas subject to the Shoreline Management Act, chapter 90.58 RCW.

(b) Allowed development activities in wetlands regulated under this chapter are:

(i) utility lines and utility facilities, other than those allowed pursuant to SCC 30.62.360;

(ii) public and private roadways, including bridge construction and culvert installation, other than those allowed pursuant to SCC 30.62.360;

(iii) wildlife management or viewing structures;

(iv) outdoor scientific or interpretive facilities;

(v) other activities and mitigation authorized by this chapter;

(vi) enhancement projects where no loss of functional values results;

(vii) the filling of up to one acre of non-riparian Category 3 or Category 4 wetlands;

(viii) development activities allowed by the County Shoreline Management Master Program in areas subject to the Shoreline Management Act, chapter 90.58 RCW;

(ix) single family residence and ordinary residential improvements on an existing legal lot as allowed in SCC 30.62.330;

(x) storm water detention/retention facilities.

(c) Allowed alteration to buffers:

(i) averaging buffer widths. The width of a buffer may be averaged, thereby reducing the width of a portion of the buffer and increasing the width of another portion, if all of the following requirements are met:

(A) averaging will not impair or reduce the habitat, water quality purification and enhancement, storm water detention, ground water recharge, shoreline protection and erosion protection, and other functions of the stream, wetland, and buffer;

(B) the total area of the buffer on the subject property is not less than the buffer which would be required if averaging was not allowed; and

(C) all parts of the width of the buffer are at least 50 percent of the required width or 25 feet, whichever is greater.

(ii) buffer width reduction. Buffer widths may be reduced if the buffer is enhanced in accordance with the following requirements:

(A) buffers, or buffers required after buffer averaging will have a minimal functional value due to existing physical characteristics;

(B) the applicant demonstrates that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the functional value of the buffer when compared with the functional value of the standard buffer;

(C) the applicant includes a comparative analysis of buffer values prior to and after enhancement, and demonstrates compliance with this section, as part of the critical area study required by SCC 30.62.340;

(D) the buffer width is not reduced below 50 percent of the standard buffer width, or 25 feet whichever is greater, and the total buffer area after reduction is not less than 75 percent of the total buffer area before reduction; and

(E) the functional values of the stream or wetland protected by the buffer are not decreased.

(d) Allowed development activities in buffers created under this chapter:

(i) pedestrian walkways or trails when constructed with natural permeable materials and designed as part of an overall site development plan;

(ii) wildlife management and viewing structures;

(iii) fishing access areas, where vehicular parking is provided outside the buffer and foot trails are constructed with natural permeable materials;

(iv) outdoor interpretive and scientific study facilities;

(v) utility lines and utility facilities installation, other than those allowed pursuant to SCC 30.62.360, where no reasonably feasible location is available outside the buffer area;

(vi) public and private roadways, other than those allowed pursuant to SCC 30.62.360 only if no other reasonably feasible access alternative exists;

(vii) development activities allowed by the county Shoreline Management Master Program in areas subject to the Shoreline Management Act, Chapter 90.58 RCW;

(viii) single family residence and ordinary residential improvements on an existing legal lot in accordance with the requirements of SCC 30.62.330; and

(ix) golf courses, where at least 60 percent of the area of the required buffer is left undisturbed, and at least 75 percent of the wetland or stream perimeter remains bounded by a minimum 25-foot wide undisturbed buffer. A chemical application and water quality management plan must be submitted to the department for approval together with a mitigation plan, as required by this chapter, which demonstrates that no buffer functional values have been decreased;

(x) stormwater retention/detention facilities, ditches, and biofilter swells.

(2) The following development activities may occur in streams, wetlands, and buffers regulated under this chapter, but will require a critical area study which meets the requirements of SCC 30.62.340 and mitigation which meets the requirements of SCC 30.62.345. A department pre-approved critical area study performed within five years of a development activity application shall be considered in compliance with this section ~~((-))~~ if after site review it is determined that the existing conditions are not significantly different from those existing at the time of the original study.

(a) The expansion of either single family structures or ordinary residential improvements existing on the effective date of this chapter if the expansion will cover less than 50 percent of the ground area coverage of the existing structure and will be set back from the critical area a distance which is greater than or equal to the setback of the original structure.

(b) Remodeling, reconstruction, or replacement of structures existing on the effective date of this chapter if the new construction or construction-related activity does not encroach further into a critical area or its setback or buffer than did the structure being remodeled; reconstructed, or replaced. Remodeling, reconstruction, and/or replacement shall be subject to all other requirements of the Snohomish County Code.

(c) Any replacement, operation, repair, or maintenance of a public or private road, other than those allowed pursuant to SCC 30.62.360.

(3) Emergency activities necessary to prevent an immediate threat to public health, safety, or property, or to prevent an imminent threat of serious environmental degradation, are allowed without prior approval in critical areas and buffers regulated under this chapter; provided however, that the development activities must be the minimum necessary to alleviate the emergency, and that within a reasonable period of time compliance with the provisions of this chapter must be provided.

Section 5. Section 30.62.370, added by Ordinance No. 02-064 on December 9, 2002, which became effective on February 1, 2003, is hereby amended to read:

30.62.370 Innovative development design.

In conjunction with an application for a development permit, an applicant may request approval of an innovative design which addresses wetland and stream protection and preservation in a creative manner that deviates from the standards set forth in SCC 30.62.310, 30.62.345, and 30.62.350.

(1) General. An applicant who requests that a development permit application be considered under the performance and design criteria of this section shall submit the following information:

- (a) A critical areas study prepared and submitted in accordance with the requirements of SCC 30.62.340; and
- (b) A conceptual site development plan drawn to scale which technically and visually illustrates the development potential achievable for the project site, and demonstrates that the innovative design proposal will achieve a net improvement in the functions and values of the streams and wetlands and their buffers over that existing on the subject property and that which is achievable using the provisions of SCC 30.62.310, 30.62.320, 30.62.345, and 30.62.350.

(2) Criteria for Approval. An innovative development design approval pursuant to this section shall be granted in conjunction with the decision on the underlying permit(s), if the following criteria are met:

- (a) The innovative design will result in a net improvement of the functions and values of the stream or wetlands and their buffers;
- (b) The innovative design is consistent with the purpose and objectives of this chapter; and
- (c) ~~((The innovative design is consistent with the standards in SCC 30.62.365; and~~
- ~~—(d)))~~ The innovative design will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located.

(3) A decision to grant or deny an innovative design may be appealed as a Type 1 decision.

Section 6. Section 30.91C.340, added by Ordinance No. 02-064 on December 9, 2002, which became effective on February 1, 2003, is hereby amended to read:

30.91C.340 Critical area.

"Critical area" means the following areas ~~((and ecosystems))~~:

- (1) Wetlands;
- (2) ~~((areas with a critical recharging effect on aquifers used for potable water;))~~
- ~~((3))~~ fish and wildlife habitat conservation areas; and
- ~~((4) frequently flooded areas; and~~
- ~~(5))~~ (3) geologically hazardous areas.

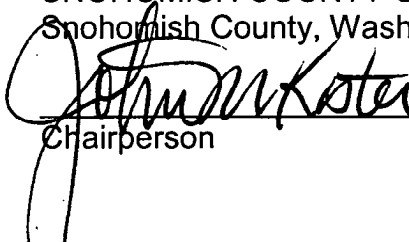
Section 7. This ordinance shall take effect immediately upon passage by the County Council.

Section 8. Pursuant to WAC 197-11-880 and SCC 30.61.020, adoption of this ordinance is categorically exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA).

Section 9. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

PASSED by a vote of 5 to 0 this 10th day of March, 2004.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Chairperson

ATTEST:


Clerk of the Council, *asst.*

- APPROVED
 EMERGENCY
 VETOED

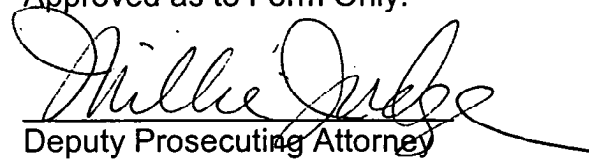
DATE: March 22, 06

ATTEST:


Ann M. Querie


County Executive

Approved as to Form Only:


Deputy Prosecuting Attorney