

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



CO00022813

AMENDED ORDINANCE NO. 94-108

**DESIGNATING AND ADOPTING REGULATIONS TO PROTECT CRITICAL
AREAS PURSUANT TO THE GROWTH MANAGEMENT ACT, CHAPTER
36.70A RCW AND ADDING A NEW CHAPTER 32.10, CRITICAL
AREAS REGULATION, TO THE SNOHOMISH COUNTY CODE**

Section 1. Aquifer recharge areas. The county's regulations pertaining to aquifer recharge areas, as defined in Chapter 36.70A RCW, are contained in Chapter 32.11 SCC, which is incorporated herein by this reference.

Section 2. Frequently flooded areas. The county's regulations pertaining to frequently flooded areas, as defined in Chapter 36.70A RCW, are contained in Chapter 27 SCC, which is incorporated herein by this reference.

Section 3. A new chapter is added to Title 32 SCC, "Growth Management", to read:

CHAPTER 32.10
CRITICAL AREAS REGULATIONS

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- 32.10.600 - Reasonable use allowance.

PART 000 - GENERAL PROVISIONS

32.10.010 Authority. This chapter is adopted pursuant to the Growth Management Act, Chapter 36.70A RCW, the county Home Rule Charter, and the Washington State Constitution, art. XI, sec. 11.

32.10.020 Purpose and objectives. The purpose of this chapter is to designate critical areas by definition and regulate development activities in critical areas to safeguard the public health, safety and welfare. The objectives of this chapter are as follows:

- (1) To protect unique, fragile and important elements of the natural environment;
- (2) To implement the Growth Management Act by designating, and adopting regulations for critical areas;
- (3) To inform county residents of the hazards from, and importance of critical areas;

(4) To increase predictability regarding what can be developed on sites that contain, or are near critical areas;

(5) To reduce public costs resulting from inappropriate development activities on, or near critical areas;

(6) To protect the public from natural hazards;

(7) To minimize the need for emergency rescue services;

(8) To balance the private rights of individual property owners with the need to protect the public health, safety and welfare and preserve environmentally sensitive areas;

(9) To prevent, or reduce the likelihood of damage to property and injury to persons resulting from development activities on or near critical areas;

(10) To assist property owners in developing their property in a manner which is consistent with its natural constraints; and

(11) To provide clear procedures for review of applications and to provide the criteria for compliance with both the State Environmental Policy Act (SEPA), RCW 43.21C and the policies of the Snohomish County Comprehensive Plan concerning critical areas.

32.10.030 Applicability. This chapter applies to all development activity not expressly exempted which occurs, or if a county permit is required, for which a complete development permit application is submitted to the department, on or after the effective date of this chapter. Notwithstanding section 32.10.040 (Exemptions), below, and at the discretion of the applicant, this chapter may also be applied as the basis for reviewing the environmental impacts of a pending subdivision, short subdivision, rural cluster subdivision or building permit application deemed complete prior to the effective date of this ordinance. Applying this chapter to development under these vested applications shall not change the status of the application as a complete application, provided the applicant files a written request for review of the application under this ordinance within 60 days after the effective date of the ordinance. Compliance with the requirements of this chapter is required prior to county approval of, or issuance of a permit for, any development activity as defined in this chapter.

32.10.040 Exemptions. The following development activities are exempt from the provisions of this chapter:

- (1) Emergency activities necessary to prevent an immediate threat to public health, safety or property;
- (2) Legally established structures and uses in existence on the effective date of this chapter;
- (3) 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.
- (4) 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. Remodelling, reconstruction and/or replacement shall be subject to all other requirements of the Snohomish County Code.
- (5) Normal and necessary agricultural practices as defined in this chapter.
- (6) Any replacement, operation, repair, modification, installation or construction by a state or local franchised utility company in an improved right-of-way or utility corridor.
- (7) Normal and routine maintenance and repair of existing utility facilities, equipment, and appurtenances.
- (8) Any development activity on a lot, tract, or parcel which was created through the subdivision or short subdivision process or which received binding site plan approval, since the adoption of the State Environmental Policy Act, Chapter 43.21C RCW and prior to the effective date of this chapter.
- (9) Construction of any single family residence or duplex and ordinary residential improvements for which the proposed area of site disturbance is 100 feet or greater from any critical area.

32.10.050 Compliance with other laws. Nothing in this chapter shall be construed to excuse compliance with any federal, state or local statute, ordinance or regulation applicable to the subject property or to the development activity, including any rules promulgated under the authority of this chapter.

32.10.060 Relationship to Title 23 SCC Environmental Impacts.

(1) Critical area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts on critical areas for purposes of Title 23 SCC.

(2) For purposes of environmental review pursuant to the state environmental policy act, Chapter 43.21C RCW, and the Snohomish county environmental policy ordinance, Title 23 SCC, this chapter shall not apply to development permit applications submitted to the department prior to the effective date of this chapter.

32.10.065 Relationship to county subarea comprehensive plan policies.

(1) The provisions of this chapter shall supercede the use of all policies contained within the Snohomish County Comprehensive Plan (subarea plans) that pertain to critical area protection and are applied to individual development proposals pursuant to RCW 36.70, RCW 58.17 and other state regulations requiring consistency with the comprehensive plan. Critical areas are those areas as defined in this chapter. For lands which do not meet the definition of critical areas and which are not regulated under this chapter, subarea plan policies shall remain in effect.

(2) The county shall identify and officially amend/remove all subarea plan policies that are inconsistent with the critical area protection provisions of this chapter within six months after the effective date of this chapter.

32.10.070 Review at the time of comprehensive plan adoption. The provisions of this chapter shall be reviewed at the time the county adopts a comprehensive plan pursuant to 36.70A RCW and may be amended to assure consistency with the plan.

32.10.080 Private Property Rights. County actions taken and regulations adopted pursuant to this chapter are subject to applicable state and federal court judicial decisions concerning local government land use regulations and private property rights, including the U.S. Supreme Court decision of Dolan Vs. City of Tigard, (512 US____, 129 LEd.2d 304, 114 S.Ct. 2309 (1994)).

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

PART 100 - DEFINITIONS

32.10.110 Definitions. Unless from the context a different meaning is clearly intended, the following definitions apply throughout this chapter.

(1) **APPLICANT.** "Applicant" means any person, corporation, or other public or private entity or agency who engages in any activity regulated by this chapter.

(2) **BOG/FEN.** "Bog/fen" system means a wetland which accumulates organic soil, has little or no inflow and is characterized by acidophilic (acid loving/producing) vegetation such as sphagnum moss, Labrador tea and bog laurel.

(3) **BOND OR PERFORMANCE SECURITY.** "Bond" or "performance security" means a surety bond, assignment of funds, escrow agreement, irrevocable letter of credit, or other financial security device acceptable to the director, which is required to assure that work is completed in accordance with all applicable requirements of this chapter.

(4) **BUFFER.** "Buffer" means an area adjacent to a critical area consisting of naturally occurring or re-established vegetation and having a width adequate to protect the critical area.

(5) **CRITICAL AREAS.** "Critical Areas" means the following areas:

- (a) Fish and Wildlife Habitat Areas;
- (b) geologically Hazardous Areas; and
- (c) wetlands

(6) **CRITICAL AREA STUDY.** "Critical Area Study" means an investigation, report, map, study and/or evaluation which may be required to demonstrate that a proposed development activity is in compliance with this chapter. As applicable, a critical area study may be a habitat management plan or a geotechnical report.

(7) **CRITICAL SPECIES.** "Critical Species" means all species listed by the federal government as endangered, or threatened.

(8) DEPARTMENT. "Department" means the Department of Planning and Development Services.

(9) DEVELOPMENT ACTIVITY. "Development Activity" means any construction, development, earth movement, clearing, or other site disturbance which either requires a permit, approval or authorization from the county or is proposed by a public agency.

(10) DIRECTOR. "Director" means the director of the Department of Planning and Development Services or that person's designee.

(11) EROSION HAZARD AREAS. "Erosion Hazard Areas" means those natural areas sloping 33 percent or more.

(12) ESTUARINE WETLAND. "Estuarine wetland" means wetlands where salt tolerant plant species are dominant and the hydrology is influenced by tidal action. The wetlands are usually partially enclosed by land with open, or partially obstructed access to open saline water. In areas where freshwater wetlands grade into estuarine areas, the boundary of the latter extends to an area where the salinity is less than 0.5 ppt (parts per thousand) during the period of average annual low flow.

(13) EXISTING LEGAL LOT. "Existing Legal Lot" means any separately described parcel or lot which was created by a subdivision or short subdivision approved by the county, was created in a segregation exempt from subdivision requirements, or was created in its present configuration by transfer of ownership prior to September 12, 1972 and complies with the lot area and other applicable provisions of Title 18 SCC.

(14) FISH AND WILDLIFE HABITAT. "Fish and Wildlife Habitat" means

- (a) Streams and wetlands regulated under Part 500 of this chapter;
- (b) areas with which critical species listed as endangered or threatened under federal law have a primary association; and
- (c) saltwater-related habitat including kelp and eelgrass beds, shellfish areas, and herring and smelt spawning areas;

(15) FUNCTIONAL VALUES. "Functional values" means those functions performed by a critical area or buffer which are highly beneficial to the maintenance of the aquatic system and surrounding environment. As used in this chapter, "functional values" for wetlands, streams and buffers are limited to the following elements:

(a) Streams. Fish and wildlife habitat, water quality maintenance, water supply and water conveyance.

(b) Wetlands. Fish and wildlife habitat, water quality maintenance, pollution assimilation, shore stabilization, sediment retention, runoff and floodwater storage and conveyance, runoff control, stream base-flow maintenance, and groundwater discharge/recharge.

(c) Buffers. Fish and wildlife habitat, runoff absorption, pollution assimilation, streambank stabilization, sediment entrapment, water quality maintenance, noise and visual screening, upland flood protection, recreation, and provision of nutrients and woody debris for streams.

(16) GEOLOGICALLY HAZARDOUS AREAS. "Geologically Hazardous Areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geologic events, may not be suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Geologically hazardous areas include erosion hazard areas, landslide hazard areas, seismic hazard areas and mine hazard areas as defined in this chapter.

(17) GEOLOGIST. "Geologist" means a person who has received a degree in geology from an accredited college or university, or a person who has equivalent educational training and substantial experience as a practicing geologist.

(18) GEOTECHNICAL ENGINEER. "Geotechnical Engineer" means a registered civil engineer experienced and knowledgeable in the theory of soil mechanics, geology and geotechnical engineering.

(19) HABITAT ENHANCEMENT. "Habitat enhancement" means improvement or restoration of habitat areas by adding, replacing or restoring important habitat components, or by removing detrimental elements.

(20) HAZARDOUS TREES. "Hazardous trees" means trees which pose an imminent danger of falling on structures.

(21) HYDROLOGICALLY CONNECTED. "Hydrologically connected" means those wetlands which have surface water connection to another wetland, stream, river, or lake.

(22) LANDSLIDE. "Landslide" means down slope movement of a mass of soil, rock, snow or ice including, but not limited to, rock falls, slumps, mud flows, debris flows, torrents, earth flows and snow avalanches.

(23) LANDSLIDE HAZARD AREAS. "Landslide Hazard Areas" means areas that, due to a combination of slope inclination, soil type and presence of water, are susceptible to landsliding in accordance with the following criteria:

(a) Areas which slope 33 percent or more and are underlain by soils that consist predominantly of silt and clay; areas which slope 33 percent or more and are underlain by sand, gravel, glacial till or soil-mantled bedrock and which contain springs and seeps; and areas located on an alluvial fan or a canyon susceptible to inundation by debris flows or catastrophic flooding;

(b) areas where landslides are known to have occurred, as indicated by landslide deposits, avalanche tracks, and areas susceptible to basal undercutting by streams or waves; and

(c) slopes of 40 percent or greater.

For purposes of this definition, continuous slopes of less than 33 percent, or slopes with less than 6.25 feet of vertical height are not landslide hazard areas.

(24) MATURE FORESTED WETLAND. "Mature forested wetland" means wetlands which are dominated by woody vegetation (such as alder, cedar, hemlock, cottonwood, and some willow species, etc.) that is over 20 feet tall, and at least 50 years old for deciduous trees and 80 years old for evergreens. (See also, wetland class.)

(25) MINE HAZARD AREAS. "Mine Hazard Areas" means areas underlain by or affected by underground mine workings such as tunnels, air shafts and those areas adjacent to steep slopes produced by open pit mining or quarrying, but excluding any areas where the mine workings have been properly stabilized and closed and made safe consistent with all applicable federal, state and local laws.

(26) MITIGATION. "Mitigation" means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

- (c) rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (e) compensating for the impact by replacing, enhancing, or providing substitute resources or environments; or
- (f) monitoring the impact and taking appropriate corrective measures.

(27) **NATIVE GROWTH PROTECTION AREA.** "Native Growth Protection Areas (NGPA)" means those areas which are to be left permanently undisturbed in a substantially natural state and in which no clearing, grading, filling, building construction or placement, or road construction of any kind is allowed except the following:

- (a) Crossings for underground utility lines and drainage discharge swales which utilize the shortest alignment possible and for which no alignment that would avoid such a crossing is feasible;
- (b) removal of hazardous trees by the property owner;
- (c) fences, only if the critical area and its buffer are not detrimentally affected; and
- (d) other uses and development activity as allowed by this chapter.

(28) **NORMAL & NECESSARY AGRICULTURAL PRACTICES.** "Normal and necessary agricultural practices" means the following existing and ongoing practices: tilling, fertilizer application; application of chemicals approved by the Environmental Protection Agency, the Washington State Department of Ecology and/or the United States Department of Agriculture in accordance with approved application procedures and best management practices; soil preparation and maintenance; fallow rotation; planting; routine maintenance and repair of drainage facilities; livestock flood sanctuaries; animal waste management facilities; harvesting; sale of farm products grown on the property; and other existing ongoing activities and uses of structures and facilities that are related to management of commercial livestock, crops, soil and vegetation. Routine maintenance and repair/modification does not include modification of the original contours or slopes of dikes or ditches, or modification of drainage facilities.

(29) **ORDINARY HIGH WATER MARK.** "Ordinary High Water" means the mark on all lakes, streams and tidal waters that will be found by examining the beds 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 and vegetation, as that

condition exists on the effective date of this title, or as it may naturally change thereafter. In any area where the ordinary high water mark cannot be found, the ordinary high water mark shall be the line of mean higher high tide in areas adjoining saltwater, and the line of mean high water in areas adjoining freshwater.

(30) **ORDINARY RESIDENTIAL IMPROVEMENTS.** "Ordinary Residential Improvements" means those structures and facilities which are commonly found with, and are incidental to the development and use of a single family residence and are located landward of the ordinary high water mark including, but not limited to, garages, decks, driveways and serving utility systems.

(31) **PRIMARY ASSOCIATION.** "Primary Association" means use of a habitat area by a critical species for rearing young, roosting, feeding, or foraging on a regular basis during the appropriate season.

(32) **PUBLIC AGENCY.** "Public Agency" means any agency or department of the United States; any agency or department of the state; any Indian tribe recognized as such by the United States; and any political subdivision, agency, municipal corporation or special purpose district of the state.

(33) **RIPARIAN WETLANDS.** "Riparian wetlands" means those wetlands that are fully or partially contained within 100 feet of Type 1, 2 or 3 streams, within 25 feet of Type 4 streams, or within 10 feet of Type 5 streams according to the stream classification system in 32.10.510(1).

(34) **SALMONID.** "Salmonid" means a member of the fish family salmonidae including chinook, coho, chum, sockeye, and pink salmon; rainbow, steelhead, searun cutthroat, cutthroat trout, brown and bull trout; brook and Dolly Varden char; kokanee and whitefish.

(35) **SEISMIC HAZARD AREAS.** "Seismic Hazard Areas" means areas mapped as seismic zones 3 and 4 in the Uniform Building Code.

(36) **SITE.** "Site" means the subject property as defined in this chapter.

(37) **SLOPE.** "Slope" means an inclined ground surface, the inclination of which is expressed as a ratio of vertical distance to horizontal distance.

(38) STREAM. "Stream" means those areas where naturally occurring surface waters flow sufficiently to produce a defined channel or bed which demonstrates clear evidence of the passage of water including, but not limited to, bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water during the entire year. This definition does not include water courses which were created entirely by artificial means, such as irrigation ditches, canals, roadside ditches or storm or surface water run-off features, unless the artificially created water course contains salmonids or conveys a stream that was naturally occurring prior to the construction of the artificially created water course.

(39) STRUCTURE. "Structure" means anything which is built or constructed, an edifice or building of any kind, or any piece of work artificially built-up or composed of parts joined together in some definite manner.

(40) SUBJECT PROPERTY. "Subject Property" means the entire lot or parcel, or contiguous combination thereof, on which a development activity is proposed.

(41) SURFACE WATER CONNECTION. "Surface water connection" means a connection via a stream, as defined in this chapter, with at least an intermittent flow.

(42) TOE OF SLOPE. "Toe of Slope" means the lowest first significant and regular break in a slope.

(43) TOP OF SLOPE. "Top of Slope" means the top of the first significant and regular break in a slope.

(44) UNIFORM BUILDING CODE. "Uniform Building Code" means Uniform Building Code and related codes as adopted in Title 17 SCC.

(45) UTILITY CORRIDOR. "Utility corridor" means areas identified for utility facility development, public right-of-way and other dedicated utility right-of-way.

(46) VOLCANIC HAZARD AREAS. "Volcanic hazard areas" means those areas subject to pyroclastic flows, lava flows, debris flows, mud flows, or related flooding resulting from volcanic activity originating on Glacier Peak, as indicated on maps produced by the United States Geological Survey.

(47) WETLAND CLASS. "Wetland class" means any of the wetland class designations described in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al. 1979). Cowardin's deep water and wetland classes include: rock bottom, unconsolidated bottom, aquatic bed, reef, rocky shore, unconsolidated shore, emergent wetland, scrub-shrub wetland, forested wetland, stream-bed and moss-lichen wetland.

(48) WETLANDS. "Wetlands" means those areas that are inundated or saturated by surface 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 include, but are not limited to swamps, marshes, bogs, and similar areas, as well as artificial wetlands intentionally created from non-wetland areas to mitigate for conversion of wetlands, as permitted by the county. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to irrigation and drainage ditches, grass-lined or biofiltering swales, canals, detention facilities, wastewater treatment facilities, farm ponds and landscaping amenities.

PART 200 - ADMINISTRATION

32.10.210 Designation of Critical Areas. The county has designated critical areas by defining their characteristics. There are no maps designating critical areas, except as otherwise indicated in this chapter. The applicant shall determine and the county shall verify, on a case by case basis, in accordance with the definitions in Part 100 of this chapter, whether a critical area exists and is regulated under this chapter on or in close enough proximity to the subject property that a habitat management plan, setback or buffer would be required under this chapter.

32.10.220 Preapplication conference. If there are, or may be, critical areas on or near the subject property, the applicant is encouraged to contact the department prior to finalizing development plans and applying for development permits. To the extent of available resources and information, the department shall assist the applicant in determining how this chapter may affect development activities on the subject property. This preliminary review is advisory only and is not binding on the applicant or the county.

32.10.230 Submittal requirements.

(1) For any development activity which is subject to this chapter, the applicant shall submit:

(a) As part of the site development plan for the underlying development permit the following information concerning the site drawn to a standard engineering scale:

(i) the boundary lines;
(ii) the topography at contour intervals of 5 feet unless the underlying permit requires a lesser interval;

(iii) the location and size of all existing and proposed structures;

(iv) the location and extent of all proposed development activity;

(v) the location and description of all critical areas located on the site and on adjacent properties within 100 feet of site boundaries; and

(vi) the location of all proposed buffers and setbacks;

(b) a critical area study if the proposed development does not comply with SCC 32.10.410(1), .420(1), .430, .440, or .520, as applicable, or when required by section .320. The content of critical area studies shall be as required in SCC 32.10.320, .450 or .550, as applicable; and

(c) any additional information known to the applicant pertaining to the critical area(s) on the subject property and adjacent properties.

(2) The county may assist applicants in identifying fish and wildlife habitat and the presence of critical species on the subject property.

(3) The county may assist applicants for single-family dwelling permits in providing information required in (1) above.

32.10.235 Time period for review. The county shall determine whether a development application complies with this chapter during the county's review under SEPA, RCW 43.21C and Title 23 SCC. The county shall complete review under this chapter prior to and within the time periods for issuance of a threshold determination under Title 23 SCC.

32.10.237 Inspection and right of entry. The department may inspect any development activity to enforce the provisions of this chapter. The applicant consents to entry upon the site by the department during regular business hours for the purposes of making reasonable inspections to verify information provided by the applicant and to verify that work is being performed in accordance with the approved plans and permits and the requirements of this chapter.

32.10.240 Permanent protection for critical areas and buffers.

(1) Critical areas and their required buffers for which permanent protection is required pursuant to SCC 32.10.410(3), .420(3) and .530 shall be designated native growth protection areas (NGPAs).

(2) Except as provided for in subsections (3) and (4) below, for development activities where land division is proposed or required, native growth protection areas shall be located in:

- (a) separate tracts owned in common by:
 - (i) all owners of the lots or parcels within a subdivision, short subdivision, planned residential development or other land division; or
 - (ii) another appropriate entity approved by the county.
- (b) a form of easement approved by the county.

(3) In subdivisions or short subdivisions where all lots are 5 acres or larger in size, NGPA's need not be contained in separate tracts.

(4) When an NGPA is entirely contained within a single proposed lot of 100,000 square feet or larger in size and where the NGPA comprises less than 20% of that lot, the NGPA need not be contained in a separate tract.

(5) For all development activities, native growth protection areas shall be delineated on binding site development plans which shall be recorded with the county auditor.

(6) Prior to any development activity on the site, the applicant shall mark with temporary markers in the field the boundary of all NGPAs required by this chapter, or the limits of the proposed site disturbance outside of the NGPAs, using methods and materials acceptable to the county.

(7) For development activities other than single-family residential development on existing legal lots, NGPA boundaries shall be permanently marked on the site prior to final inspection by the county using methods and materials acceptable to the county.

32.10.250 Dispute resolution and appeals.

(1) The director, in conjunction with the County Council, shall establish a dispute resolution process pursuant to SCC 32.10.270 for disputes under this chapter.

(2) Except as provided in SCC 32.10.600(4) concerning appeals of a reasonable use allowance, any person aggrieved by a decision applying this chapter to a development activity may appeal the decision:

(a) in conjunction with an appeal of the underlying application/permit in those cases where administrative appeal of the underlying application/permit is expressly authorized by county code; or

(b) together with the underlying decision pursuant to the provisions of Chapter 2.02 SCC in those cases where this chapter has been applied in conjunction with an application/permit over which the hearing examiner exercised original jurisdiction.

(3) At the hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence.

(4) The effect of, and procedures for appeal from decisions rendered pursuant to subsection (2) shall be determined in accordance with the provisions of county code regarding the underlying application/permit.

32.10.260 Bond or Performance Security.

(1) Performance Security Requirement. Prior to issuance of any permit or approval which authorizes site disturbance to which this chapter applies, the director shall require performance security to be provided in such form and amounts as the director deems necessary to assure that all work or actions required by this chapter are satisfactorily completed in accordance with the approved plans, specifications, permit or approval requirements, and applicable regulations, and to assure that all work or actions not satisfactorily completed will be corrected to comply with approved plans, specifications, requirements, and regulations, to eliminate hazardous conditions, to restore environmental damage or degradation, and to protect fish and wildlife habitat and the health, safety and general welfare of the public.

(2) Form and Amount of Performance Security. The performance security shall be a surety bond obtained from companies registered as surety in the state or certified as acceptable sureties on federal bonds. In lieu of a surety bond, the director may allow alternative performance security in the form of an assignment of funds or account, an escrow agreement, an irrevocable letter of credit, or other financial security device in an amount equal to that required for a surety bond and in a form approved by the director. The surety bond or other performance security shall be conditioned on the work or requirements being completed in accordance with the approved plans and the requirements of the permit or approval, on the site being left in a safe condition, and on the site and adjacent or surrounding areas being restored in the event of damages or other environmental degradation from development activities conducted pursuant to the permit or approval.

The amount of the performance bond shall be 120 percent of the estimated cost, as approved by the director, of conformance to plans, specifications and permit or approval requirements, under this chapter, including corrective work and compensation, enhancement, mitigation, and restoration of critical areas. All bond or performance security shall be submitted in their original form with original signatures of authorization.

(3) Administration of Performance Security. If during the term of the performance security, the director determines that conditions exist which do not conform with plans, specifications or permit requirements, the director may issue a stop work order pursuant to SCC 32.10.290 prohibiting any additional work until the condition is corrected. The director may revoke the performance security, or a portion thereof, in order to correct conditions that are not in conformance with plans, specifications, or permit requirements. The applicant may not proceed with work until the original amount of the performance security has been re-established. The performance security may be released upon written notification by the director, following final site inspection, or at such time as specified in a mitigation plan, when the director is satisfied that the work or activity complies with and conforms to permit conditions, plans and specifications, including corrective work, compensation, enhancement, and mitigation or restoration of critical areas, when required.

(4) Exemptions for Public Agencies. In accordance with RCW 36.32.590, state agencies and units of local government, including school districts, shall not be required to secure the performance of permit or approval conditions or requirements with a surety bond or other financial security device as a condition of issuance of a permit for a development activity. State agencies and units of local government, including school districts, are required to comply with all requirements, terms, and conditions of the permit or approval, and the county may enforce compliance by withholding certificates of occupancy or occupancy approval, by administrative enforcement action, or by any other legal means.

32.10.270 Administrative Rules, Policies and Procedures.

(1) The director is authorized to create, adopt and amend administrative rules, policies and procedures to implement and enforce the provisions of this chapter. A copy of all administrative rules, policies and procedures, and any amendments thereto, shall be filed with the clerk of the county council. All administrative rules, policies and procedures shall be available to the public at the front counter of the department.

(2) Initial administrative rules, policies and procedures shall be issued within 120 days from the effective date of this chapter.

32.10.280 Fees. The director shall develop a fee schedule designed to recover the department's costs to administer this chapter and shall forward the schedule to the council for approval by motion.

32.10.290 Violations and enforcement.

(1) All violations of this chapter are subject to the provisions of Title 28 SCC. Whenever the director determines that a condition exists in violation of this chapter, or in violation of any condition or requirement of a permit or approval imposed pursuant to this chapter, the director is authorized to take enforcement action under Title 28 SCC.

(2) Stop-work order.

(a) Whenever the director determines that work is being done in violation of a provision of this chapter, the director may order work at the site stopped if the director determines that it is necessary in order to obtain compliance with a provision of this chapter;

(b) the stop-work order shall contain a description of the violation, and an order that work be stopped until the violation has been corrected and the correction has been approved by the director;

(c) the stop-work order shall be posted conspicuously on the premises or personally served on any person engaged in, or causing such work to be done. Any person served with a stop-work order shall immediately stop all work or cause all work to be stopped, except work necessary to correct the violation, until authorized by the director to proceed;

(d) the penalty for violation of a stop-work order shall be as established in Title 28 SCC; and

(e) a stop-work order that has been posted may not be removed, obscured, or mutilated.

(3) Suspension or revocation. A permit or approval issued in error, or on the basis of incomplete, inaccurate, or misleading information supplied by the applicant, or in violation of any law, ordinance or regulation, may be suspended or revoked. Other permits or approvals interrelated with the one that has been suspended or revoked under this section, including certificates of occupancy or approvals for occupancy, may also be suspended or revoked. When a permit or approval is suspended or revoked, the director may require the applicant to take corrective action to bring the project into compliance with this chapter, or may take other enforcement action.

(4) Withholding of certificate of occupancy. In addition to the issuance of any order for abatement and correction of a violation of this chapter pursuant to Title 28 SCC, the director may withhold issuance of a Certificate of Occupancy or other forms of occupancy approval until the violation has been corrected.

(5) Hazards. Whenever the director determines that a condition caused by a development activity regulated by this chapter creates a present or imminent hazard, or is likely to create a hazard to the public safety, health or welfare, the environment, or public or private property, the director may declare such condition a public nuisance and may direct the property owner or persons causing or contributing the hazardous condition to abate the hazard within a specified period, or the director may take action to abate the hazard and recover all costs incurred.

(6) Additional relief. In lieu of, or in addition to any enforcement procedure provided in this chapter, the director may seek any other available legal or equitable relief.

32.10.295 Open space taxation. Chapter 4.28 SCC provides a mechanism for property owners to obtain tax relief for portions of their property that are left in open space. Certain critical areas and buffers may qualify for the open space general tax classification and the owners of these affected properties may be granted tax relief under that chapter.

PART 300 - FISH AND WILDLIFE HABITAT

32.10.310 Protection for fish and wildlife habitat.

(1) All stream, wetland and riparian habitat is protected pursuant to Part 500 of this chapter. In addition, when these habitat areas contain critical species listed as endangered or threatened by the state or federal governments, they shall also be protected pursuant to SCC 32.10.320.

(2) All fish and wildlife habitat not otherwise protected pursuant to subsection (1) shall be protected pursuant to the requirements of SCC 32.10.320.

32.10.320 Habitat management plan.

(1) A habitat management plan is required when the Priority Habitats and Species maps or Natural Heritage Program maps maintained by the department, or other information, indicates the presence of the following on the site:

(a) areas with which critical species listed as endangered or threatened under federal law have a primary association; or

(b) saltwater-related habitat as described in 32.10.110(14c).

(2) All habitat management plans shall be prepared in consultation with the state Department of Fish and Wildlife. Habitat management plans for critical species listed as endangered or threatened shall be approved by the Department of Fish and Wildlife.

(3) The county will gather the required information in this section for applicants seeking to develop a single family home.

(4) Habitat Management Plan content requirements. Based on the characteristics of the site and information submitted by the applicant, the director may require that all or a portion of the following be included in a habitat management plan:

(a) A map drawn to scale or survey showing the following information:

(i) all lakes, ponds, streams, wetlands and tidal waters on, or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream type or wetland category consistent with 32.10.510(1) and (2);

(ii) the location and description of the fish and wildlife habitat area on the subject property, as well as any potential fish and wildlife habitat within 200 feet of the subject property as shown on maps maintained by the department; and

(iii) the location of any observed evidence of use by a critical species;

(b) an analysis of how the proposed development activities will affect the fish and wildlife habitat area and any critical species;

(c) provisions to reduce or eliminate the impact of the proposed development activities on any fish and wildlife habitat area and critical species; and

(d) the habitat management plan should also address the following issues:

(i) prohibition or limitation of development activities within the fish and wildlife habitat area;

(ii) establishment of a buffer around the fish and wildlife habitat area;

(iii) retention of certain vegetation or areas of vegetation critically important to the critical species;

(iv) limitation of access to the fish and wildlife habitat area and buffer;

(v) seasonal restrictions on construction activities on the subject property;
(vi) clustering of development on the subject property; and
(vii) the preservation or creation of a habitat area for the critical species.

PART 400 - GEOLOGIC HAZARD AREAS

32.10.410 Erosion hazard areas.

(1) Development activity proposed in erosion hazard areas as defined in this chapter shall be protected by use of best management practices found in Title 24 SCC.

(2) The director may approve erosion control measures which differ from those required by subsection (1) above 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 subsection (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 32.10.240.

32.10.420 Landslide hazard areas.

(1) Except for mineral extraction practices, development activity on, or adjacent to slopes steeper than 33 percent, shall comply with the requirements of this section.

(a) Ascending slopes.

i. For slopes 33% to 100%, the setback from the toe of the slope shall be the height of the slope divided by 2. (See Slope Setback Diagram #1).

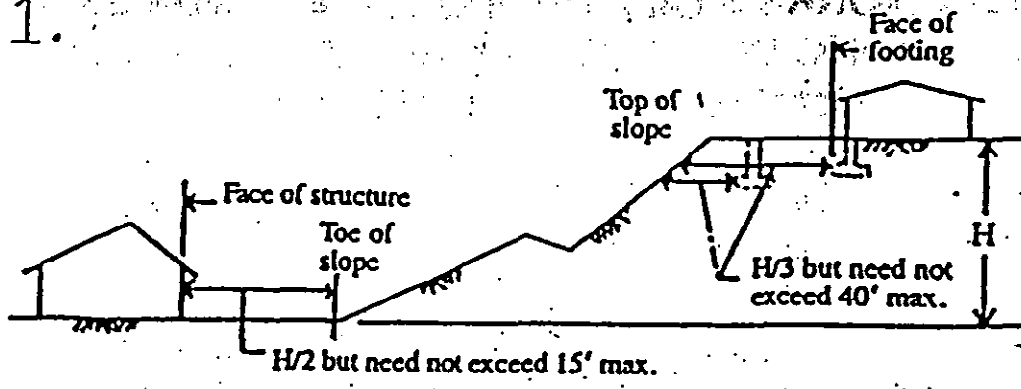
ii. For slopes greater than 100%, the setback from the toe of the slope shall be the height of the slope divided by 2. The toe of the slope shall be assumed to be at the intersection of a horizontal plane drawn at the top of the foundation and a plane drawn tangent to the slope at an angle of 45° (100%) to the horizontal (See Slope Setback Diagram #3).

(b) Descending slopes.

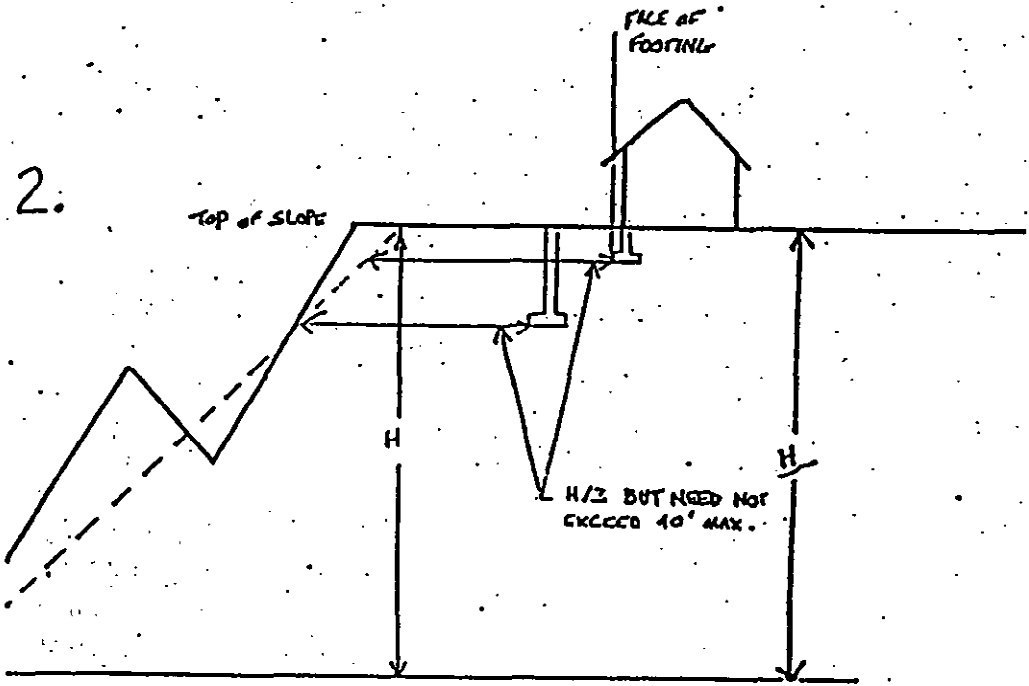
i. For slopes 33% to 100%, the setback from the top of slope shall be the height of the slope divided by 3. (See Slope Setback Diagram #1)

ii. For slopes greater than 100%, the required setback from the top of the slope shall be the height of the slope divided by 3. The setback shall be measured from an imaginary plane 45° (100%) to the horizontal projected upward from the toe of the slope (See Slope Setback Diagram #2).

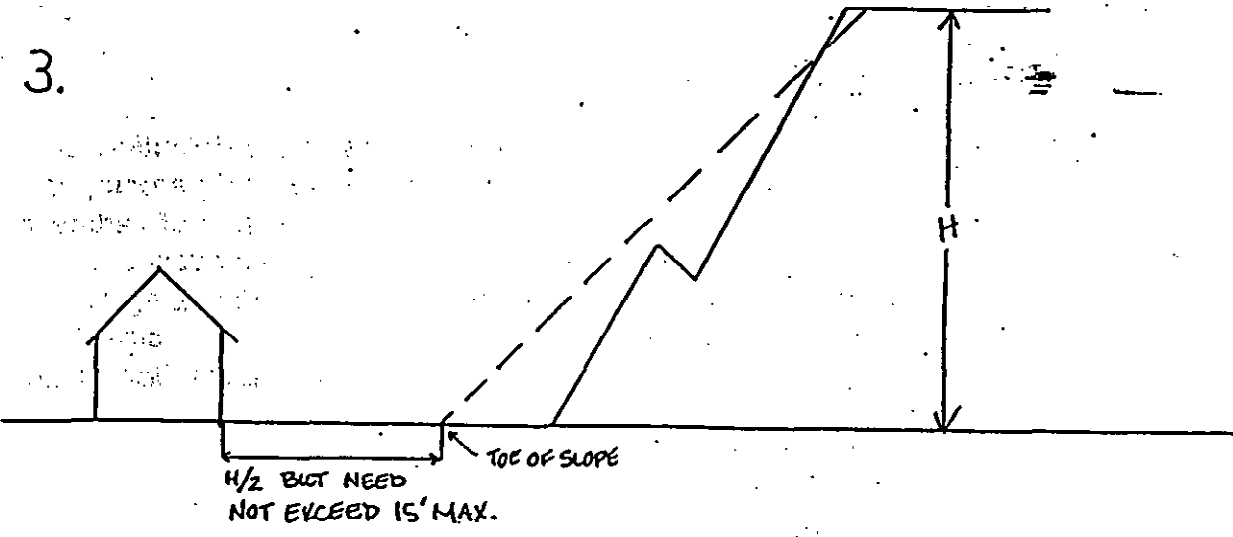
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2.



3.



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

(3) All portions of landslide hazard areas on the site which are undisturbed by development activities shall be designated as Native Growth Protection Areas in accordance with SCC 32.10.240.

32.10.430 Seismic hazard areas. Development activity in a seismic hazard area shall meet all applicable provisions of the Uniform Building Code, as adopted by Snohomish County, for seismic zones 3 and 4.

32.10.440 Mine hazard areas. Development activities proposed adjacent to mine hazard areas shall be subject to the requirements in sections .410 and .420.

32.10.450 Geotechnical report content requirements. Geotechnical reports shall be prepared by a geotechnical engineer or geologist, as appropriate. Geotechnical reports shall be stamped by an engineer. Based on the site characteristics and the information submitted by the applicant, the director may require all or a portion of the following to be included in a geotechnical report for the subject property:

(1) A site development plan drawn to scale which shows the boundary lines and dimensions of the subject property, the location, size and type of any existing or proposed structures, impervious surfaces, wells, drainfields, drainfield reserve areas, roads, easements, and utilities on site;

(2) the location of springs, seeps, or other surface expressions of ground water, and the location of surface water or evidence of seasonal surface water runoff or ground water;

(3) a discussion of the geological and engineering properties of the soils, sediments, and/or rocks on the subject property and adjacent properties and their effect on the stability of the slope;

(4) the extent and type of vegetative cover prior to development activity or site disturbance;

(5) the proposed method of drainage and locations of all existing and proposed surface and subsurface drainage facilities and patterns, and the locations and methods for erosion control;

(6) a description of the soils in accordance with the Unified Soil Classification System;

(7) an identification of all existing fill areas;

(8) information demonstrating compliance with all applicable codes and ordinances for the underlying permit;

(9) a vegetation management and restoration plan or other means for maintaining long-term stability of slopes; and

(10) evidence showing faults, significant geologic contacts, landslides, or downslope soil movement on the subject property and adjacent properties.

32.10.460 Volcanic Hazard Areas. Maps showing volcanic hazard areas produced by the United States Geological Survey will be available for viewing in the department upon request.

PART 500 - STREAMS AND WETLANDS

32.10.510 Classification of streams and wetlands.

(1) Stream Classifications. Streams are classified based on the water typing criteria in WAC 222-16-030 as adopted by the state in June 1993 and summarized in Table 1 below.

TABLE 1
Water Typing Criteria WAC 222-16-030

Water Type	1	2	3	4	5
Channel Width	N/A	20 ft. or greater between ordinary high water marks (OHWM)	Anadromous fish: 5 ft. or wider between OHWM. Resident game fish: 10 ft. or wider between OHWM.	2 ft. wider between OHWM.	Less than 2 ft. between OHWM.
Gradient	N/A	Less than 4% (Less than 5% for off-channel drainages)	Anadromous Fish: Less than 12%. Not upstream of a falls greater than 10 ft. high. Resident Game Fish: Less than 12%	N/A	N/A
Flow	N/A	N/A	Anadromous Fish: N/A. Resident Game Fish: Greater than 0.3 CFS at summer low flow.	N/A	N/A
Impoundment	N/A	Water surface area of 1 acre or greater at seasonal low flow.	Anadromous Fish: Surface area less than 1 acre at seasonal low flow. Resident game fish: Surface area less than 0.5 acres at seasonal low flow.	N/A	N/A
Fisheries	N/A	Used by substantial numbers of anadromous or resident game fish for spawning, rearing and migration.	Used by significant numbers of anadromous or resident game fish for spawning, rearing and migration.	Not used by significant numbers of fish.	Not used by significant numbers of fish.
Diversion	N/A	Domestic use for 100 or more residences or campsites, accommodation facility for 100 or more persons - includes upstream reach of 1500 ft. or until the drainage area is < or = to 50%, whichever is less.	Domestic use for 10 or more residences or campsites, accommodation facility for 10 or more persons - includes upstream reach of 1500 ft. or until the drainage area is less than 50%, whichever is less.	N/A	N/A
Other	All water within OHWM inventoried as "Shorelines of the State" excluding related wetlands	Streams flowing through campgrounds available to the public having 30 campsites or more.	Contributes > 20% of the flow to a Type 1 or 2 water. Anadromous fish impoundments have outlet to stream with anadromous fish.	All natural waters not classified as Types 1, 2, or 3 and for the purpose of protecting downstream waters.	All natural waters not classified as Type 1, 2, 3 or 4, or seepage areas, ponds and drainage ways having short run-off periods.

(2) Wetlands Categories. All determinations of wetlands ratings will be based on the entire extent of the wetlands, unrelated to property lines or ownership patterns. Wetlands are classified based on the following systems:

- (a) Category 1 Wetlands are wetlands which satisfy one or more of the following criteria:
- (i) Are equal to or greater than 10 acres in size, hydrologically connected and contain 3 or more wetland classes each covering 10% or more of the wetland, one of which is open water;
 - (ii) have been documented by the state department of Fish and Wildlife Priority Habitat Species Program as regionally significant waterfowl or shorebird concentration areas;
 - (iii) are bog/fen systems one acre or larger;
 - (iv) are mature forested wetlands equal to or greater than 10 acres in size; or
 - (v) are estuarine wetlands.
- (b) Category 2 Wetlands are wetlands which satisfy one or more of the following criteria:
- (i) Are equal to or greater than 5 acres in size and contain 3 or more wetland classes; or
 - (ii) are mature forested wetlands less than 10 acres in size;
 - (iii) are bogs/fens systems less than one acre.
- (c) Category 3 Wetlands are wetlands which satisfy none of the criteria for Category 1, 2, or 4 wetlands.
- (d) Category 4 Wetlands are non-riparian wetlands less than 1 acre, with one wetland class, and >90% areal coverage of any combination of species from the list in Table 2 below:

TABLE 2

Category 4 wetlands: invasive/exotic plant species:

<u>Scientific name</u>	<u>Common name</u>
Agropyron repens	Quackgrass
Alopecurus pratensis, A. aequalis	Meadow foxtail
Arctium minus	Burdock
Bromos tectorum, B. rigidus, B. brizaeformis, B. secalinus, B. japonicus, B. mollis, B. commutatus, B. inermis, B. erectus	Bromes
Cenchrus longispinus	Sandbur
Centaurea solstitialis, C. repens, C. cyanus, C. maculosa, C. diffusa	Knapweeds
Cirsium vulgare, C. arvense	Thistles
Cynosurus cristatus, C. echinatus	Dogtail
Cytisus scoparius	Scot's broom

Dactylis glomerata	Orchardgrass
Dipsacus sylvestris	Teasel
Digitaria sanguinalis	Crab Grass
Echinochloa crusgalli	Barnyard grass
Elaeagnus augustifolia	Russian Olive
Euphorbia peplus, E. esula	Spurge
Festuca arundinacea, F. pratensis	Fescue
Holcus lanatus, H. mollis	Velvet grass
Hordeum jubatum	Foxtail
Hypericum perforatum	Barley
Juncus effusus	St. John's wort
Lolium perenne, L. multiflorum, L. temulentum	Soft Rush
Lotus corniculatus	Ryegrass
Lythrum salicaria	Birdsfoot trefoil
Matricaria matricarioides	Purple loosestrife
Medicago sativa	Pineapple weed
Melilotus alba, M. officinalis	Alfalfa
Phalaris arundinacea	Sweet clover
Phleum pratense	Reed Canary Grass
Phragmites communis	Timothy
Poa compressa, P. palustris, P. pratensis	Reed
Polygonum aviculare, P. convolvulus, P. cuspidatum, P. lapathifolium, P. persicaria	Bluegrass
Ranunculus repens	Knotweeds
Rubus discolor, R. laciniatus, R. vestitus, R. macrophyllus	Buttercup
Salsola kali	Non-native blackberry
Setaria viridis	Russian Thistle
Sisymbrium altissimum, S. loeselii, S. officinale	Green Bristlegrass
Tanacetum vulgare	Tumblemustards
Trifolium dubium, T. pratense, T. repens, T. arvense, T. subterraneum, T. hybridum	Tansy
Cultivated species:	Clovers
	wheat, corn, barley, rye etc.

(3) Wetlands Subject to Regulation. All riparian wetlands, regardless of size, all Category 1 wetlands, and the following non-riparian wetlands, are regulated by this chapter:

(a) Non-riparian Category 2 and 3 wetlands larger than 5,000 square feet in size; and

(b) Non-riparian Category 4 wetlands larger than 10,000 square feet in size.

32.10.520 Standard buffer width requirements. The buffers for streams and wetlands regulated under this chapter shall be distinguished between urban and rural characteristics. For purposes of this chapter, urban streams and wetlands are those portions of streams and wetlands which are contained within an urban growth boundary as designated by the county. Rural streams and wetlands are those portions of streams and wetlands which lie outside an urban growth boundary as designated by the county. This distinction is based on differences in wildlife habitat value and the need to maintain housing density opportunities within urban areas.

When stream and wetland buffers are required, their width shall be as stated in this section except as provided in SCC 32.10.570(3), SCC 32.10.590 or SCC 32.10.600.

(1) Widths for required rural stream buffers are as follows:

- (a) For a Type 1 stream - 100 feet;
- (b) for a Type 2 stream - 100 feet;
- (c) for a Type 3 stream - 100 feet;
- (d) for a Type 4 stream - 50 feet; and
- (e) for a Type 5 stream - 25 feet.

(2) Widths for required rural wetland buffers are as follows:

- (a) For a Category 1 wetlands - 100 feet;
- (b) for a Category 2 wetlands - 75 feet;
- (c) for a Category 3 wetlands - 50 feet; and
- (d) for a Category 4 wetlands - No buffer.

(3) Widths for required urban stream buffers are as follows:

- (a) For a Type 1 stream - 100 feet;
- (b) For a Type 2 stream - 75 feet;
- (c) For a Type 3 stream - 50 feet;
- (d) For a Type 4 stream - 25 feet; and
- (e) For a Type 5 stream - 10 feet.

(4) Widths for required urban wetland buffers are as follows:

- (a) For a Category 1 wetlands - 75 feet;
- (b) For a Category 2 wetlands - 50 feet;
- (c) For a Category 3 wetlands - 25 feet; and
- (d) For a Category 4 wetlands - No buffer.

(5) Measurement. For streams and wetlands, the buffer shall be measured horizontally in a landward direction from the ordinary high water mark or wetland edge, respectively. Where lands adjacent to a stream display a continuous slope of thirty three percent (33%) or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point twenty five (25) feet beyond the top of the bank of the sloping area.

32.10.530 Permanent protection for streams, wetlands and buffers. All streams and wetlands regulated under this chapter and their required buffers shall be permanently protected by designating them as Native Growth Protection Areas in accordance with SCC 32.10.240.

32.10.540 Single-family residence on existing legal lots. The applicant may develop a single-family residence and ordinary residential improvements in a wetland, wetland buffer or stream buffer on an existing legal lot if all the following requirements are met:

(a) There is no alternate location for the single-family residence and ordinary residential improvements on the subject property outside the wetland, wetland buffer or stream buffer;

(b) all new structures on the subject property are constructed in areas that will minimize disruption to the critical area and buffer;

(c) all areas of wetland, wetland buffer or stream buffer disrupted during development are restored to the maximum extent possible;

(d) the construction and use of the single family residence and ordinary residential improvements are consistent with all other applicable law, including, but not limited to, Title 18 SCC; and

(e) all development activities on the subject property are consistent with a site development plan approved by the director, which may include requirements to reduce the impact on the critical area and buffer from the construction and use of the single family residence and ordinary residential improvements.

32.10.550 Critical area study content requirements: streams and wetlands. A critical area study is required for any development activity allowed under SCC 32.10.570, .590 or .600, PROVIDED, HOWEVER, that the county will gather the required information in this section for applicants seeking to develop a single family home. Depending upon the characteristics of the site and the information submitted by the applicant, the director may require any or all of the following as part of the critical area study:

(1) A map drawn to scale or survey showing the following information:

(a) The edge of the wetland based on the Corps of Engineers Wetlands Delineation Manual (January, 1987, Technical Report Y-87-1, Department of the Army), provided that at the request of the applicant, the edge of the wetland may be based on the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January, 1989).

The county will provide information to the public concerning the costs and benefits associated with use of each manual to allow applicants to make an informed decision regarding which manual they would prefer to use. Once the wetland delineation has been completed, the applicant may not request use of the alternative manual without resubmitting their development application:

(b) the wetlands characteristics and plant communities based on the U.S. Fish and Wildlife Service Classification of Wetlands and Deep Water Habitats in the U.S.;

(c) stream corridors, name (if named), and stream type based on the state Department of Natural Resources' Official Water Type Maps; and

(d) observed or reported wildlife that make use of the area including, but not limited to, nesting, breeding and feeding areas.

(2) A description of the streams and wetlands within 100 feet of the subject property, including buffers, drainage systems entering and leaving the site, a list of observed and documented plant and wildlife species, a description of the relative abundance of documented plant and wildlife species, and a description of the method used for flagging the wetlands edge, stream corridor and buffers.

(3) A description and illustration of proposed development activities allowed under SCC 32.10.570, .590 and .600 within streams, wetlands or buffers.

(4) A description of any previous disturbances to the streams, wetlands or buffers.

(5) A summary of the methodology used to conduct the study.

(6) A proposed classification of the streams and wetlands based on section 32.10.510 of this chapter and an explanation or rationale for the proposed rating.

(7) A mitigation plan which meets the requirements of SCC 32.10.560.

(8) A stream relocation plan which meets the requirements of SCC 32.10.570(1)(g) if applicable.

(9) A discussion of existing functional values of the stream(s), wetland(s) and buffers.

(10) A discussion of the changes to stream, wetland and buffer functional values resulting from the proposed development activity.

The county will assist landowners applying for permits to develop a single family home in gathering the required information.

32.10.560 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 in accordance with the following requirements:

(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 shall be replaced at a ratio of 1 (replacement value) to 1 (existing value) when mitigation occurs on-site, and a ratio of 1 to 1 when mitigation occurs off-site, to compensate for the loss of functional values over time, and the unproven nature of wetland creation/restoration projects;

(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; and

(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; and

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

(3) When mitigation is required for drainage impacts only, a detailed drainage plan pursuant to Title 24 SCC may be substituted for a mitigation plan. The detailed drainage plan may not require an acreage replacement value but shall require complete mitigation of all drainage impacts.

(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.

32.10.570 Allowed development activities in streams, wetlands and buffers. 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 32.10.550 and mitigation which meets the requirements of 32.10.560.

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

(a) Utility lines, hydroelectric power generating facilities and all other public and private utility facilities;

(b) public and private roadway crossings;

(c) bridge construction and culvert installations;

(d) bank protection and flood protection, including flow control structures for regional retention/detention systems;

- (e) in-stream fish and/or wildlife habitat enhancement;
- (f) activities and mitigation authorized by this chapter including stream restoration, enhancement, and relocation which increases functional value; and
- (g) stream relocation when a plan is submitted as part of the critical area study which demonstrates that the following criteria are met:
 - (i) the relocation will improve water quality, fish or wildlife habitats, wetland recharge (if hydrologically connected to a wetland);
 - (ii) 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;
 - (iii) relocation will maintain or improve hydrologic function;
 - (iv) natural materials and vegetation normally associated with the stream will be utilized;
 - (v) spawning, rearing and nesting areas will be created, if applicable;
 - (vi) fish populations will be reestablished, if applicable; and
 - (vii) water flow characteristics compatible with fish habitat areas will be restored; and
- (h) development activities allowed by the county Shoreline Management Master Program in areas subject to the Shoreline Management Act, Chapter 90.58 RCW.

- (2) Allowed development activities in wetlands regulated under this chapter:
 - (a) Utility lines and facilities;
 - (b) public and private roadways, including bridge construction and culvert installation;
 - (c) wildlife management or viewing structures;
 - (d) outdoor scientific or interpretive facilities;
 - (e) other activities and mitigation authorized by this chapter;
 - (f) enhancement projects where no loss of functional values results; and
 - (g) filling in Category 3 and 4 wetlands regulated under this chapter as follows:
 - (i) within urban growth areas designated by the county pursuant to Chapter 36.70A RCW, non-riparian Category 4 wetlands may be filled if the loss of stormwater retention functions is mitigated in accordance with the requirements of Title 24 SCC;

(ii) within urban growth areas designated by the county pursuant to Chapter 36.70A RCW, up to one acre of non-riparian Category 3 wetlands can be filled per site if loss of wetland functions is mitigated at an areal replacement ratio of 1.5:1 for on-site mitigation, or a ratio of 2:1 for off-site mitigation; and

(iii) outside of urban growth areas, non-riparian Category 4 wetlands may be filled when mitigation is provided at a ratio of 1.5:1 for on-site mitigation, or a ratio of 2:1 for off-site mitigation.

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

(i) single family residence and ordinary residential improvements on an existing legal lot as allowed in SCC 32.10.540.

(j) stormwater detention/retention facilities.

(3) Allowed alteration to buffers:

(a) 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:

(i) 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;

(ii) 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

(iii) no part of the width of the buffer is less than 50% of the required width or 25 feet, whichever is greater.

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

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

(ii) 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;

(iii) 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 32.10.550;

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

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

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

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

(b) wildlife management and viewing structures;

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

(d) outdoor interpretive and scientific study facilities;

(e) utility lines and facilities installation, where no reasonably feasible location is available outside the buffer area;

(f) public and private roadways only if no other reasonably feasible access alternative exists;

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

(h) single family residence and ordinary residential improvements on an existing legal lot in accordance with the requirements of SCC 32.10.540; and

(i) 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: PROVIDED that, 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.

32.10.580 Review criteria for development activities in streams, wetlands and buffers regulated under this chapter.

(1) The county shall evaluate each proposed development activity in a stream, wetland or buffer regulated under this chapter in accordance with the following hierarchy of goals: avoid impacts, minimize impacts, repair or restore impacts, reduce impacts over time or mitigate impacts through replacement, restoration or enhancement of functions.

(2) To utilize the provisions set forth in SCC 32.10.570, .590 or .600, applicants must submit a critical area study unless the area is exempt under 32.10.510(3) or a study is not required under other provisions of this chapter. The county will review the critical area study and proposed development activity in accordance with the following criteria:

- (a) The development activity will not
 - (i) adversely affect water quality;
 - (ii) destroy, damage or disrupt a fish and wildlife habitat area;
 - (iii) adversely affect drainage or storm water detention capabilities; or
 - (iv) lead to unstable earth conditions or erosion;
- (b) the impacts are the minimum necessary to accommodate the development activity and are fully mitigated in accordance with SCC 32.10.560;
- (c) any disruption to a critical area will occur in the least sensitive area; and
- (d) critical areas or buffers temporarily disrupted during construction will be restored.

32.10.590 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 32.10.520 and .570.

(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 section 32.10.550; 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 functional 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 32.10.520, .530 and .570.

(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 functional values of the stream or wetlands and their buffers;
- (b) the innovative design has been approved by the state resource agencies with jurisdiction;
- (c) the innovative design is consistent with the purpose and objectives of this chapter;
- (d) the innovative design is consistent with the standards in SCC 32.10.580; and

(e) 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 in accordance with the provisions of SCC 32.10.250(2).

PART 600 - REASONABLE USE ALLOWANCE

32.10.610 Reasonable use allowance.

(1) General. If the application of SCC 32.10.300 or 32.10.500 pertaining to fish and wildlife habitat or stream/wetlands will prevent the applicant from making any economically viable use of the subject property, the applicant may apply for a reasonable use allowance on a form provided by the department. The application must accompany a development permit application through the county review and decision process.

(2) Criteria for granting. The director shall grant a reasonable use allowance only when the following criteria are met:

(a) The applicant demonstrates that the application of this chapter will deny all economically viable use of the subject property otherwise allowed by applicable law;

(b) the development activities involve the least intrusion into and disruption of the critical area necessary to allow an economically viable use of the subject property;

(c) the development activities will not cause or result in damage to properties other than the subject property and will not endanger the public health, safety or welfare;

(d) the applicant's inability to make economically viable use of the subject property has not resulted from any of the following:

(i) prior subdivision or segregation of the subject property, or changes to the boundaries of the subject property through a boundary line adjustment or otherwise;

(ii) prior actions taken in violation of this chapter or any local, state, or federal law or regulation; and

(iii) natural constraints of the subject property that would otherwise preclude the proposed development activities.

(3) The county may assist applicants in providing the information required in subsection (2) above.

(4) Appeals. The applicant may appeal a decision of the director on a reasonable use allowance application to the hearing examiner pursuant to the provisions of Chapter 2.02 SCC.

(5) The development activities authorized by a reasonable use allowance shall not constitute a significant adverse environmental impact under Title 23 SCC to the critical area(s) for which the allowance is granted.

Section 4. The department shall investigate the feasibility of developing programs pertaining to:

(1) Transfer of development rights, lot size averaging and other options for ensuring density and development potential;

(2) an open space program incorporating a habitat corridor network;

(3) Wetland mitigation banking;

(4) Fish Habitat Protection Program adopted by Council Motion 93-400;

(5) Management plans for lakes and ponds addressing fish and wildlife habitat and water quality issues;

(6) The future use of county watershed management plans approved pursuant to GMA. Watershed management plans should be integrated into this chapter and should provide a means of supplementing or replacing certain provisions of this chapter with basin specific watershed management plan provisions;

(7) Exemptions for unintentionally created wetlands;

(8) Analysis of functional values at individual wetland level and at broader watershed level;

(9) Public education pertaining to the requirements and use of this chapter; and

(10) The county shall prepare an annual report on the impacts of Chapter 32.10 within two years of the adoption of this ordinance. The report will include, at least, average permitting time, costs of permits to the applicant and the amount of land area set aside as critical areas, including buffers under Chapter 32.10.

Section 5. The department shall report to the county council on the implementation of this chapter, and on administrative rules promulgated by the director pursuant to section 32.10.270 Administrative Rules. Reports shall be made beginning six months from the effective date of this ordinance, and every six months thereafter for a period of two years.

PASSED this 7th day of March, 1995.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Karen Miller
Chairperson

ATTEST:

Sheila McCallister
Clerk of the Council, *asst.*

- () APPROVED
() EMERGENCY
() VETOED

Date: March 22, 1995
[Signature]
County Executive

ATTEST:

Marilyn B. Abel

CODE REVISER'S NOTE:

The references to "Department" and "Director" in 32.10.110(8) and (10) have been changed to be consistent with the action taken by the county council in Ordinance 95-004 on February 15, 1995 which amended all citations to the Department of Planning and Community Development to now read the Department of Planning and Development Services.