

**SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON**



CO00022382

AMENDED ORDINANCE NO. 96-011

**AMENDING SNOHOMISH COUNTY CODE, CHAPTER 32.10
CRITICAL AREAS REGULATIONS**

WHEREAS, this ordinance is adopted to comply with the Puget Sound Growth Management Hearings Board's decision in Pilchuck Audubon Society et al v. Snohomish County, CPSGMHB No. 95-3-0047; and

WHEREAS, both the original critical areas regulations adopted by Ordinance 94-108 and those changes contained in Ordinance 96-011 have been reviewed for consistency with the county's Growth Management Act Comprehensive Plan (GMACP) adopted by Ord. 94-125 as required by RCW 36.70A.060(3); and

WHEREAS, the Snohomish County Council finds that both the original critical areas regulations adopted by Ord. 94-108, as well as those changes contained in Ord. 96-011, are consistent with the county's Growth Management Act Comprehensive Plan (GMACP), adopted by Ord. 94-125; and

WHEREAS, the Snohomish County Council finds that both the original critical areas regulations adopted by Ord. 94-108, as well as those changes contained in Ord. 96-011, maintain the structure, functions and values of critical areas within major watersheds of the county, based upon the record before Council in both of these proceedings; and

WHEREAS, the County Council finds that both Ord. 94-108 and Ord. 96-011 meet the requirements of the Growth Management Act for the designation and protection of critical areas, and the Council recognizes that the board's decision on Ord. 94-108 is currently on appeal in King County Superior Court Cause No. 96-2-05662-6SEA and will not be decided until after the deadline set by the CPSGMHB for compliance by the county; and

WHEREAS, in recognition of the circumstances cited above the Council will enact a savings clause with Ord. 96-011 which will make null and void any provision of this ordinance which revises any provision of Ord. 94-108 which is found by the court to comply with the GMA;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Snohomish County Code, section 32.10.030 added by Ord. 94-108 on March 7, 1995 is amended to read:

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 SCC 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 chapter. 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 chapter within 60 days after the effective date of this chapter. 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.

Section 2. Snohomish County Code, section 32.10.040 added by Ord. 94-108 on March 7, 1995 is repealed.

Section 3 Snohomish County Code, section 32.10.070 added by Ord. 94-108 on March 7, 1995 is hereby repealed.

Section 4 Snohomish County Code, section 32.10.110 added by Ord. 94-108 on March 7, 1995 is amended to read:

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

(1) ANADROMOUS FISH. "Anadromous fish" means fishes, such as salmon and sea-run trout, that live part or the majority of their lives in salt water but return to fresh water to spawn.

((1)2) APPLICANT. "Applicant" means any person, corporation, or other public or private entity or agency who engages in any activity regulated by this chapter.

((2)3) BEST MANAGEMENT PRACTICES. "Best management practices" means management measures that are reasonable and available that mitigate adverse impacts to surface and groundwater, and to the functional values of critical areas.

(((2))4) 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))5) BOND. "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))6) 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))7) CRITICAL AREAS. "Critical areas" means the following areas:

- (a) Fish and wildlife habitat conservation areas;
- (b) Geologically hazardous areas; and
- (c) Wetlands.

(((6))8) 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))9) CRITICAL SPECIES. "Critical species" means all species listed by the federal government as endangered, or threatened.

(((8))10) DEPARTMENT. "Department" means the department of planning and development services.

(((9))11) 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.

(1((0))2) DIRECTOR. "Director" means the director of the department of planning and development services or that person's designee.

(1((1))3) EROSION HAZARD AREAS. "Erosion hazard areas" means those areas with naturally occurring slopes, containing soils which are at high risk from water erosion according to the mapped description units of the United States Department of Agriculture Soil Conservation Service Soil Classification System, ((natural areas sloping 33 percent or more.))

(1((2))4) **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.

(1((3))5) **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.

(1((4))6) **FISH AND WILDLIFE HABITAT CONSERVATION AREAS.**
"Fish and wildlife habitat conservation areas"(~~(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.

(1((5))7) **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.

(1((6))8) **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.

(1((7))9) **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))20) **GEOTECHNICAL ENGINEER.** "Geotechnical engineer" means a registered civil engineer experienced and knowledgeable in the theory of soil mechanics, geology and geotechnical engineering.

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

(2((9))2) **HAZARDOUS TREES.** "Hazardous trees" means trees which pose an imminent danger of falling on structures.

(2((1))3) **HYDROLOGICALLY CONNECTED.** "Hydrologically connected" means those wetlands which have surface water connection to another wetland, stream, river, or lake.

(2((2))4) **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.

(2((3))5) **LANDSLIDE HAZARD AREAS.** "Landslide hazard areas" means areas potentially subject to mass earth movement based on a combination of geologic, topographic, and hydrologic factors, with a vertical height of 10 feet or more. These include the following:~~((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;))~~

(a((b))) Areas of historic landslides as evidenced by landslide deposits, avalanche tracks, and areas susceptible to basal undercutting by streams, rivers or waves.~~((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))~~

~~(b((e)))~~ Areas with slopes steeper than 15 percent which intersect geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock, and which contain springs or ground water seeps. ~~((Slopes of 40 percent or greater.))~~

(c) Areas located in a canyon or an active alluvial fan, susceptible to inundation by debris flows or catastrophic flooding.

~~((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.))~~

(2((4))6) **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.)

(2((5))7) **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.

(2((6))8) **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.

(2((7))9) NATIVE GROWTH PROTECTION AREAS (NGPA). "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 AND 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))30) ORDINARY HIGH WATER. "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.

(3((9))1) 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.

(3((1))2) **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.

(3((2))3) **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.

(3((3))4) **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 SCC 32.10.510(1).

(3((4))5) **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.

(3((5))6) **SEISMIC HAZARD AREAS.** "Seismic hazard areas" means areas mapped as seismic zones 3 and 4 in the Uniform Building Code.

(3((6))7) **SITE.** "Site" means that portion of the subject property within 200 feet of the development activity provided, however, that for subdivisions, short subdivisions, planned residential developments, and projects with binding site plans, the "site" shall include the entire subject property ((as defined in this chapter)).

(3((7))8) **SLOPE.** "Slope" means an inclined ground surface, the inclination of which is expressed as a ratio of vertical distance to horizontal distance.

(3((8))9) **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))40) **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.

(4((0))1) **SUBJECT PROPERTY.** "Subject property" means the entire lot or parcel, or contiguous combination thereof, on which a development activity is proposed.

(4((1))2) **SURFACE WATER CONNECTION.** "Surface water connection" means a connection via a stream, as defined in this chapter, with at least an intermittent flow.

(4((2))3) **TOE OF SLOPE.** "Toe of slope" means the lowest first significant and regular break in a slope.

(4((3))4) **TOP OF SLOPE.** "Top of slope" means the top of the first significant and regular break in a slope.

(4((4))5) **UNIFORM BUILDING CODE.** "Uniform Building Code" means Uniform Building Code and related codes as adopted in Title 17 SCC.

(4((5))6) **UTILITY CORRIDOR.** "Utility corridor" means areas identified for utility facility development, public right-of-way and other dedicated utility right-of-way.

(47) **UTILITY** "Utility" means any public or private electrical, water, sewer, storm drainage, gas, radio, television, or telephone facility and/or other forms of communication facilities utilizing the electromagnetic spectrum to the public.

(4((6))8) **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.

(4((7))9) **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))50) **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.

Section 5 Snohomish County Code, section 32.10.230 added by Ord. 94-108 on March 7, 1995 is amended to read:

32.10.230 Submittal requirements.

(1) For any development activity which is subject to this chapter, except for the construction of any single family residence or duplex and ordinary residential improvements for which the proposed areas of site disturbance is 100 feet or greater from any critical area, and those activities allowed pursuant to 32.10.575, 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 interval of five 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), 32.10.420(1), 32.10.420(2), 32.10.430, 32.10.440, or 32.10.520, as applicable, or when required by SCC 32.10.320. The content of critical area studies shall be as required in SCC 32.10.320, 32.10.450 or 32.10.550, 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 conservation areas 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.

Section 6. Snohomish County Code, section 32.10.240 added by Ord. 94-108 on March 7, 1995 is amended to read:

32.10.240 Permanent protection for critical areas and buffers.

(1) For development activities consistent with previously approved site plans:

- (a) Where critical areas have been identified and where specific and adequate permanent protection has been provided, no additional restrictions or protection will be required. Adequate permanent protection shall include, but not necessarily be limited to, measures for permanent preservation of the critical areas, buffers, and setbacks.
- (b) Where critical areas or portions of critical areas have not been accurately designated and/or mapped, and where adequate permanent protection has been provided for the accurately designated and/or mapped critical areas, the existing permanent protection measures shall also apply to the newly designated critical areas.
- (c) Where critical areas have been accurately designated and/or mapped, and adequate permanent protection has not been provided, all provisions of this chapter shall apply.

~~2~~(1) Critical areas and their required buffers for which permanent protection is required pursuant to SCC 32.10.410(3), 32.10.420(3) and 32.10.530 shall be designated native growth protection areas (NGPAs).

~~3~~(2) Except as provided for in subsections ~~((3))4~~ and ~~((4))5~~ 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.

~~4~~(3) In subdivisions or short subdivisions where all lots are five acres or larger in size, NGPAs need not be contained in separate tracts.

~~5~~(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 percent of that lot, the NGPA need not be contained in a separate tract.

~~(6((5)))~~ For all development activities, except for the 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 and those activities allowed pursuant to 32.10.575, native growth protection areas shall be delineated on binding site development plans which shall be recorded with the county auditor.

~~(7((6)))~~ Prior to any development activity on the site, except for the 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 and those activities allowed pursuant to 32.10.575, 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.

~~(8((7)))~~ For development activities other than single-family residential development on existing legal lots and those activities allowed pursuant to 32.10.575, NGPA boundaries shall be permanently marked on the site prior to final inspection by the county using methods and materials acceptable to the county.

Section 7. Snohomish County Code, section 32.10.310 added by Ord. 94-108 on March 7, 1995 is amended to read:

32.10.310 Protection for fish and wildlife habitat conservation areas.

(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 conservation areas not otherwise protected pursuant to subsection (1) shall be protected pursuant to the requirements of SCC 32.10.320.

Section 8. Snohomish County Code, section 32.10.320 added by Ord. 94-108 on March 7, 1995 is amended to read:

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 SCC 32.10.110(14)(c).

(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 SCC 32.10.510(1) and (2);
 - (ii) The location and description of the fish and wildlife habitat conservation (~~fish and wildlife habitat~~) area on the subject property, as well as any potential fish and wildlife habitat conservation area (~~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 conservation (~~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 conservation (~~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 conservation (~~fish and wildlife habitat~~) area;

- (ii) Establishment of a buffer around the fish and wildlife habitat conservation ~~((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 conservation ~~((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.

Section 9. Snohomish County Code, section 32.10.420 added by Ord. 94-108 on March 7, 1995 is amended to read:

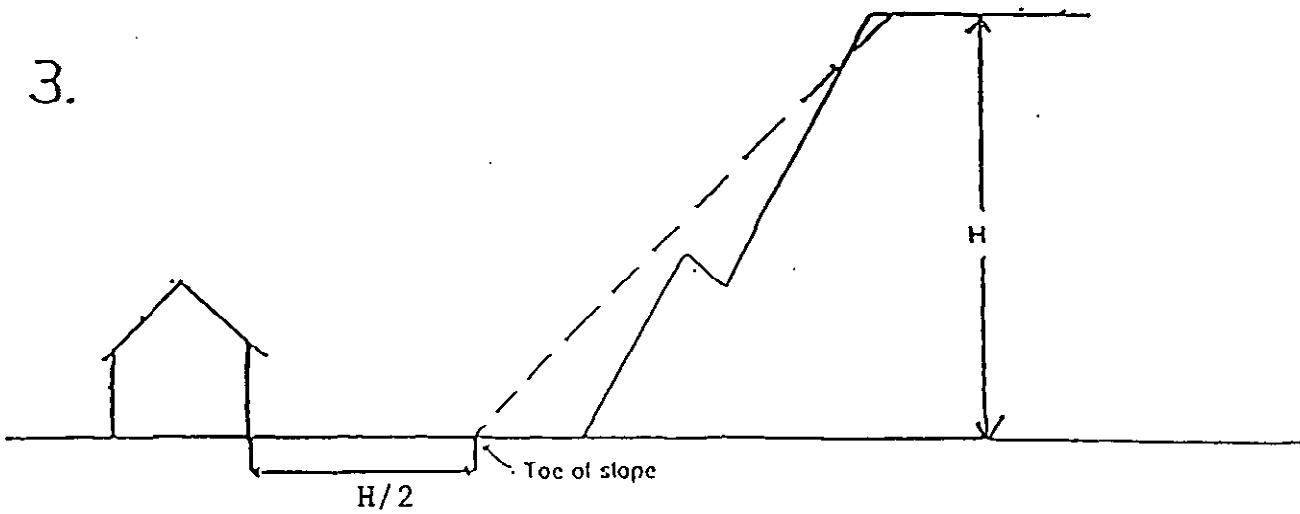
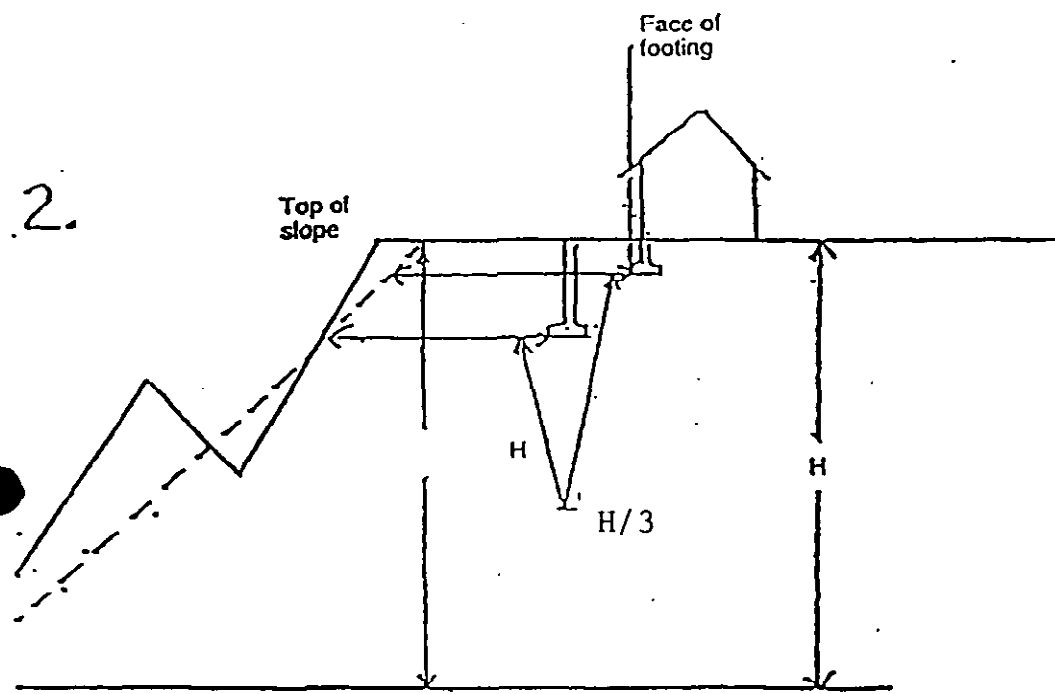
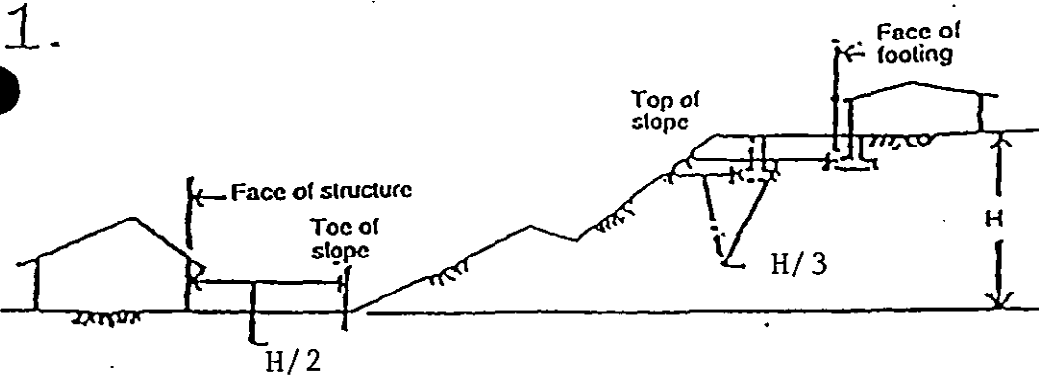
32.10.420 Landslide hazard areas.

(1) Development activities on landslide hazard areas shall be protected by use of generally accepted proper engineering and construction practices. Unless waived by the Director, or the presentation of documentation by the director to support further geotechnical engineering analysis, a geotechnical report, or structural engineering, shall be required to determine proper protective measures. ~~((Except for mineral extraction practices, development activity on, or adjacent to slopes steeper than 33 percent, shall comply with the requirements of this section.))~~

(2) Structures on, or adjacent to, landslide hazard areas shall be protected by use of generally accepted proper engineering and construction practices, and shall meet the following requirements:

- (a) Ascending Slopes.
 - (i) For slopes 33 percent to 100 percent, 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 percent, 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 percent) to the horizontal (see Slope Setback Diagram #3).
- (b) Descending slopes.
 - (i) For slopes 33 percent to 100 percent, 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 percent, 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 percent) to the horizontal projected upward from the toe of the slope (see Slope Setback Diagram #2).

Slope Setback Diagrams



~~(c((2)))~~ The director may approve setbacks which differ from those required by subsection ~~((1))2~~ 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))2~~.

(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.

Section 10. Snohomish County Code, section 32.10.510 added by Ord. 94-108 on March 7, 1995 is amended to read:

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 acre at seasonal low flow.	N/A	N/A
Fisheries	N/A	Used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration.	Used by significant numbers of anadromous or resident game fish for spawning, rearing or 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 1,500 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 Type 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 runoff 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 three or more wetland classes each covering 10 percent 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 five acres in size and contain three or more wetland classes; or
 - (ii) Are mature forested wetlands less than 10 acres in size;
 - (iii) Are bog/fen 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 one acre, with one wetland class, and >90 percent 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	Scotch 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 barley
Hypericum perforatum	St. John's wort
Juncus effusus	Soft Rush
Lolium perenne, L. multiflorum, L. temulentum	Ryegrass
Lotus corniculatus	Birdsfoot trefoil
Lythrum salicaria	Purple loosestrife
Matricaria matricarioides	Pineapple weed
Medicago sativa	Alfalfa
Melilotus alba, M. officinalis	Sweet clover
Phalaris arundinacea	Reed Canary Grass
Phleum pratense	Timothy
Phragmites communis	Reed
Poa compressa, P. palustris, P. pratensis	Bluegrass
Polygonum aviculare,	

P. convolvulus, P. cuspidatum, P. lapathifolium, P. persicaria	Knotweeds
Ranunculus repens	Buttercup
Rubus discolor, R. laciniatus, R. vestitus, R. macrophyllus	Non-native blackberry
Salsola kali	Russian Thistle
Setaria viridis	Green Bristlegrass
Sisymbrium altissimum, S. loeselii, S. officinale	Tumblemustards
Tanacetum vulgare	Tansy
Trifolium dubium, T. pratense, T. repens, T. arvense, T. subterraneum, T. hybridum	Clovers
Cultivated species:	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.))~~

Section 11. Snohomish County Code, section 32.10.520 added by Ord. 94-108 on March 7, 1995 is amended to read:

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))1)(c), SCC 32.10.590 or SCC 32.10.61((9))0.

- (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.))~~ 25 feet of undisturbed native vegetation, or any lesser width or vegetation type which will provide the same level of protection to the functional values of the wetland and the 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 - 100 ~~((75))~~ feet;
 - (c) For a Type 3 stream-- 100 feet - with anadromous fish
For a Type 3 stream 50 feet; - without anadromous fish
 - (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.))~~ 25 feet of undisturbed native vegetation, or any lesser width or vegetation type which will provide the same level of protection to the functional values of the wetland and the 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 33 percent 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 25 feet beyond the top of the bank of the sloping area.

Section 12. Snohomish County Code, section 32.10.530 added by Ord. 94-108 on March 7, 1995 is amended to read:

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 PROVIDED however, that existing legally established structures, and non-native or ornamental landscaping, including but not necessarily limited to: gardens, yards, pastures, orchards, are not required to be designated as native growth protection areas.

Section 13. Snohomish County Code, section 32.10.550 added by Ord. 94-108 on March 7, 1995 is amended to read:

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, 32.10.590 or 32.10.6((0))10, **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, 32.10.590 and 32.10.6((θ))10 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 SCC 32.10.510 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(a((+)))(viii) 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.

Section 14. Snohomish County Code, section 32.10.570 added by Ord. 94-108 on March 7, 1995 is amended to read:

32.10.570 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 32.10.550, and a mitigation plan which meets the requirements of SCC 32.10.560, and the review criteria of SCC 32.10.580 :((-)) Provided: That a department pre-approved critical area study performed within two years of a development activity application shall be considered in compliance with this section.

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

- (i((a))) Utility lines, hydroelectric power generating facilities and all other public and private utility facilities other than those allowed pursuant to 32.10.575.
- (ii((b))) Public and private roadway crossings, other than those allowed pursuant to SCC 32.10.575;
- (iii((e))) Bridge construction and culvert installations;
- (iv((d))) Bank protection and flood protection, including flow control structures for regional retention/detention systems;
- (v((e))) In-stream fish and/or wildlife habitat enhancement;
- (vi((f))) Activities and mitigation authorized by this chapter including stream restoration, enhancement, and relocation which increases functional value; and
- (vii((g))) Stream relocation when a plan is submitted as part of the critical area study which demonstrates that the following criteria are met:

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

(B((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;

(C((iii))) Relocation will maintain or improve hydrologic function;

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

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

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

~~(G((vii)))~~ Water flow characteristics compatible with fish habitat areas will be restored; and

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

~~(b((2)))~~ Allowed development activities in wetlands regulated under this chapter:

~~(i((a)))~~ Utility lines and utility facilities, other than those allowed pursuant to 32.10.575;

~~(ii((b)))~~ Public and private roadways, including bridge construction and culvert installation, other than those allowed pursuant to SCC 32.10.575;

~~(iii((e)))~~ Wildlife management or viewing structures;

~~(iv((d)))~~ Outdoor scientific or interpretive facilities;

~~(v((e)))~~ Other activities and mitigation authorized by this chapter;

~~(vi((f)))~~ Enhancement projects where no loss of functional values results; ~~((and))~~

~~(vii((g)))~~ The filling of up to one acre of non-riparian Category 3 or Category 4 wetlands.

~~((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 storm water 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.))~~

~~(viii(h))~~ Development activities allowed by the county shoreline management master program in areas subject to the shoreline management act, chapter 90.58 RCW.

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

~~(x(j))~~ Storm water detention/retention facilities.

~~(c(3))~~ Allowed alteration to buffers:

~~(i(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:

~~(A(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;

~~(B(i))~~ 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(iii))~~ No part of the width of the buffer is less than 50 percent of the required width or 25 feet, whichever is greater.

~~(ii(b))~~ Buffer Width Reduction. Buffer widths may be reduced if the buffer is enhanced in accordance with the following requirements:

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

~~(B(i))~~ 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(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;

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

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

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

(ii((b))) Wildlife management and viewing structures;

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

(iv((d))) Outdoor interpretive and scientific study facilities;

(v((e))) Utility lines and utility facilities installation, other than those allowed pursuant to 32.10.575, where no reasonably feasible location is available outside the buffer area;

(vi((f))) Public and private roadways other than those allowed pursuant to 32.10.575 - -only if no other reasonably feasible access alternative exists;

(vii((g))) Development activities allowed by the county shoreline management master program in areas subject to the shoreline management act, chapter 90.58 RCW;

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

(ix((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.

(x) Stormwater retention/detention facilities, ditches and biofilter swales.

(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 32.10.550 and mitigation which meets the requirements of SCC 32.10.560; Provided: That a department pre-approved critical area study performed within two years of a development activity application shall be considered in compliance with this section.

(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 utility.~~

~~((d) Any replacement, operation, repair, modification, installation or construction of a utility by a state or local franchised utility company in an improved right of way or utility corridor.))~~

~~((e)c) Any replacement, operation, repair, or maintenance of a public or private road, other than those allowed pursuant to SCC 32.10.575.~~

(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 15. NEW SECTION. A new section 32.10.575 is added to the Snohomish County Code to read as follows:

32.10.575 Activities allowed in streams, wetlands and buffers pursuant to best management practices.

(1) The following activities may occur in streams, wetlands and buffers regulated under this chapter provided that such activities are conducted pursuant to best management practices:

- (a) Normal, routine, and emergency maintenance and repair of existing roads and utility corridors, utility facilities, equipment and appurtenances.
- (b) Replacement, modification, extension, installation, or construction by a utility purveyor in an improved public road right-of-way.
- (c) Replacement or modification of existing facilities by a utility purveyor in an improved utility corridor.
- (d) Replacement, modification, extension, installation, or construction by a utility purveyor of individual utility service lines connecting to a utility distribution system.
- (e) Replacement, modification, minor installation or construction in an improved right-of-way by the county or by the holder of a current right-of-way use permit.
- (f) All development activities in non riparian Category 2 and 3 wetlands smaller than 5,000 square feet, and non riparian Category 4 wetlands smaller than 10,000 square feet.

Section 16. Snohomish County Code, section 32.10.580 added by Ord. 94-108 on March 7, 1995 is amended to read:

32.10.580 Review criteria for development activities allowed pursuant to SCC 32.10.570.((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 function.

(2) To utilize the provisions set forth in SCC 32.10.570, 32.10.590 or 32.10.610, applicants must submit a critical area study(~~(, unless the area is exempt under SCC 32.10.510(3))~~) unless ~~((or))~~ a study is not required under other provisions of this chapter. The county will review the critical area study and proposed development activity mitigation plan in accordance with the following criteria:

- (a) The mitigated development activity will not:
 - (i) Adversely affect water quality;
 - (ii) Destroy, damage or disrupt a fish and wildlife habitat conservation ~~((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 and not subject to permanent development activity as authorized under 32.10.570 will be restored.

Section 17. Snohomish County Code, section 32.10.610 added by Ord. 94-108 on March 7, 1995 is amended to read:

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 conservation areas~~((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 18. Savings.

The amendment to provisions of Chapter 32.10 SCC by this ordinance are adopted in part to comply with the Final Decision and Order of the Central Puget Sound Growth Management Hearings Board in the case of Pilchuck Audubon Society, et al v. Snohomish County, CPSGMHB No. 95-3-0047. An appeal of that final decision and order is currently pending in the case of Master Builders Association of King and Snohomish Counties v. Central Puget Sound Growth management Hearings Board, King County Superior Court No. 96-2-056626SEA. It is the intent of the County Council that any provision of Chapter 32.10. SCC originally adopted by Ordinance 94-108 which was found by the Growth Management Hearing Board not to comply with the Growth Management Act, which is amended or repealed by this ordinance and which is subsequently found by the Superior Court to comply with the Growth Management Act, be

reenacted and that any provision of this ordinance amending or repealing that provision be null and void as of the date of the Superior Court's written order. Specifically:

(1) Exemptions. In the event that the Superior Court upholds any of the exemptions originally adopted by Ordinance 94-108 in SCC 32.10.040, the repeal of those exemptions by Section 2 of this ordinance and the corresponding additions to:

SCC 32.10.110 adopted by Section 4;
SCC 32.10.230 adopted by Section 5;
SCC 32.10.240 adopted by Section 6;
SCC 32.10.530 adopted by Section 12;
SCC 32.10.570 adopted by Section 14; and
SCC 321.0.575 adopted by Section 15

are null and void and those exemptions are hereby reenacted.

(2) Buffers. In the event that the Superior Court upholds the requirements originally adopted by Ordinance 94-108 in SCC 32.10.520 which are amended or repealed by Section 11 of this ordinance, the requirements adopted by Ordinance 94-108 are reenacted and the amendments adopted by Section 11 of this ordinance are null and void.

(3) Smaller wetlands. In the event that the Superior Court upholds the requirements originally adopted by Ordinance 94-108 in SCC 32.10.510(3) which are amended or repealed by Section 10 of this ordinance, the requirements adopted by Ordinance 94-108 are reenacted and the amendments adopted by Section 10 of this ordinance are null and void.

(4) Erosion hazard definition. In the event that the Superior Court upholds the requirements originally adopted by Ordinance 94-108 in SCC 32.10.110(11) which are amended or repealed by Section 4 of this ordinance, the requirements adopted by Ordinance 94-108 are reenacted and the amendments adopted by Section 4 of this ordinance are null and void.

(5) Landslide hazard definition. In the event that the Superior Court upholds the requirements originally adopted by Ordinance 94-108 in SCC 32.10.110(23) and SCC 32.10.420 which are amended or repealed by Sections 4 and 9 of this ordinance, the requirements adopted by Ordinance 94-108 are reenacted and the amendments adopted by Sections 4 and 9 of this ordinance are null and void.

Section 19. Effective date. This ordinance shall be effective on June 1, 1996 unless, prior to that date an order is entered in Master Builders Association of King and Snohomish Counties v. Central Puget Sound Growth Management Hearings Board, King County Superior Court Cause No. 96-2-056626SEA, staying the effectiveness of the Final Decision and Order of the Central Puget Sound Growth Management Hearings Board dated December 6, 1995 in Pilchuck Audubon

Society, et al v. Snohomish County, CPSGMHB No. 95-3-0047. If such a stay is entered by the Superior Court, this ordinance shall be effective 30 days following the vacation of the stay or the entry of a final judgment in King County Superior Court Cause No. 96-2-056626SEA, whichever shall first occur.

PASSED this 30th day of April, 1996.

Richard C Johnson
Chair
Snohomish County Council

ATTEST:

Sheila McCaustis
Clerk of the Council, *asst*

- Approved
- Vetoed
- Emergency

Dated: 5-3-96

Joan M Earl
County Executive
JOAN M. EARL
Deputy Executive

ATTEST:

Sandra Grogan
Admin. Asst.

APPROVED AS TO FORM

Deputy Prosecuting Attorney