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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

AMENDED ORDINANCE 98-021

RELATING TO CRITICAL AREAS;
AMENDING SNOHOMISH COUNTY CODE CHAPTER 32.10

BE IT ORDAINED:

Section 1. Snohomish County Code section 32.10.560, adopted by Amended Ordinance 94-108 on March 7, 1995, is amended to read:

32.10.560 Mitigation (~~plan~~) requirements.

(1) Unless otherwise provided by this chapter, mitigation shall be required for loss of area or (~~functional~~) functions and values 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 set forth in this section. Mitigation may be provided through the use of a wetland mitigation bank approved pursuant to SCC 32.10.595 which may include deviations from the requirements of this section. (~~;~~)

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

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

(c) Wetland (~~acreage and~~) functions and values shall be replaced in kind at a minimum ratio of one (replacement value) to one (existing value) (~~when mitigation occurs on site, and a ratio of one to one 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) When ((The)) mitigation plans are required, they shall:

(a) Include a base line study that analyzes the existing functions~~((at))~~ and values of the critical area and buffer, functions~~((at))~~ and values that will be lost, and the system's functions~~((at))~~ and values after mitigation,~~((;))~~ provided that when restoration is required pursuant to SCC 32.10.560(1)(a), the pre-existing conditions shall be the basis of the study;

(b) Specify how lost functions~~((at))~~ and 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;~~((;))~~

~~((g))~~ ~~((3))~~ Address the requirements of SCC 32.10.570(1)(a)(vii) when a stream relocation is proposed; and ~~((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.))~~

(h) Address the requirements of SCC 32.10.570(1)(c) when buffer alteration is proposed.

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

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

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

Section 2. Snohomish County Code section 32.10.570, last amended by Amended Ordinance 96-011 on April 30, 1996, 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))~~ five years of a development activity application shall be considered in compliance with this section~~((-))~~ if after site review it is determined that the existing conditions are not significantly different from those existing at the time of the original study.

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

(i) Utility lines, hydroelectric power generating facilities and all other public and private utility facilities other than those allowed pursuant to SCC 32.10.575;

(ii) Public and private roadway crossings, and public or private non-motorized trail crossings, other than those allowed pursuant to SCC 32.10.575;

(iii) Bridge construction and culvert installations;

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

(v) In-stream fish and/or wildlife habitat enhancement;

(vi) Activities and mitigation authorized by this chapter including wetland mitigation banks and stream restoration, enhancement~~((-))~~ and relocation which increases functions~~((al))~~ and values; and

(vii) Stream relocation when a plan is submitted as part of the critical area study which demonstrates that the following criteria are met:

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

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

(C) Relocation will maintain or improve hydrologic function,

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

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

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

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

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

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

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

(ii) Public and private roadways, and public or private non-motorized trails, including bridge construction and culvert installation, other than those allowed pursuant to SCC 32.10.575;

(iii) Wildlife management or viewing structures;

(iv) Outdoor scientific or interpretive facilities;

(v) Other activities and mitigation authorized by this chapter including wetland mitigation banks;

(vi) Enhancement projects where no loss of functions ~~((a))~~ and values results;

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

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

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

(x) Storm water detention/retention facilities.

(c) Allowed alteration to buffers:

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

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

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

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

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

(A) Buffers, or buffers required after buffer averaging will have ~~((a))~~ minimal functions ~~((a))~~ and values due to existing physical characteristics;

(B) The applicant demonstrates that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the functions ~~((a))~~ and values of the buffer when compared with the functions ~~((a))~~ and values of the standard buffer;

(C) The applicant includes a comparative analysis of buffer values prior to and after enhancement, and demonstrates compliance with this section, as part of the critical area study required by SCC 32.10.550;

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

(E) The functions ~~((a))~~ and values of the stream or wetland protected by the buffer are not decreased.

- (d) Allowed development activities in buffers created under this chapter:
- (i) Pedestrian walkways or trails when constructed with natural permeable materials and designed as part of an overall site development plan;
 - (ii) Wildlife management and viewing structures;
 - (iii) Fishing access areas, where vehicular parking is provided outside the buffer and foot trails are constructed with natural permeable materials;
 - (iv) Outdoor interpretive and scientific study facilities;
 - (v) Utility lines and utility facilities installation, other than those allowed pursuant to SCC 32.10.575, where no reasonably feasible location is available outside the buffer area;
 - (vi) Public and private roadways, and public or private non-motorized trails, other than those allowed pursuant to SCC 32.10.575 — only if no other reasonably feasible access alternative exists;
 - (vii) Development activities allowed by the county Shoreline Management Master Program in areas subject to the Shoreline Management Act, Chapter 90.58 RCW;
 - (viii) Single-family residence and ordinary residential ~~improvements~~ improvements on an existing legal lot in accordance with the requirements of SCC 32.10.540; and
 - (ix) Golf courses, where at least 60 percent of the area of the required buffer is left undisturbed, and at least 75 percent of the wetland or stream perimeter remains bounded by a minimum 25-foot wide undisturbed buffer; 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 functions ~~((at))~~ and values have been decreased;
 - (x) Stormwater retention/detention facilities, ditches and biofilter swales.
 - (xi) Wetland mitigation banks approved pursuant to SCC 32.10.595.

(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))~~ five years of a development activity application shall be considered in compliance with this section if after site review it is determined that the existing conditions are not significantly different from those existing at the time of the original study.

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

(b) Remodeling, reconstruction or replacement of structures existing on the effective date of this chapter if the new construction or construction-related activity does not encroach further into a critical area or its setback or buffer than did the structure being remodeled, reconstructed or replaced. Remodeling, reconstruction

and/or replacement shall be subject to all other requirements of the Snohomish County Code.

(c) Any replacement, operation, repair, or maintenance of a public or private road, other than those allowed pursuant to SCC 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 3. Snohomish County Code section 32.10.580, last amended by Amended Ordinance 96-011 on April 30, 1996, is amended to read:

32.10.580 Review criteria for development activities impacting critical areas and buffers (~~allowed pursuant to SCC 32.10.570~~)).

(1) The county shall evaluate each proposed development activity in a stream, wetland or buffer allowed pursuant to SCC 32.10.570 (~~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) For development activities proposed pursuant to (~~To utilize the provisions set forth in~~) SCC 32.10.570, 32.10.590, 32.10.595 or 32.10.610, applicants must submit a critical area study unless 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 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 SCC 32.10.570 will be restored.

Section 4. Snohomish County Code section 32.10.590, adopted by Amended Ordinance 94-108 on March 7, 1995, is amended to read:

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, 32.10.560 and 32.10.570.

(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 SCC 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 functions~~((a))~~ and values of the streams and wetlands and their buffers ~~over~~ that existing on the subject property and that which is achievable using the provisions of SCC 32.10.520, 32.10.530 and 32.10.570.

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

(a) The innovative design will result in a net improvement of the functions~~((a))~~ and 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; and

~~(((d) The innovative design is consistent with the standards in SCC 32.10.580; and))~~

(d((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).

Section 5. A new section is added to Snohomish County Code Chapter 32.10 to read:

32.10.595 Wetland mitigation banking.

(1) The director may approve the use of a wetland mitigation bank to provide mitigation required by this chapter in accordance with the criteria set forth in subsection (2) of this section. Notwithstanding any other provision of this chapter, the director may also approve the establishment of a wetland mitigation bank prior to an application for approval of a development activity which will use the wetland mitigation bank. The

director's approval may allow for deviations from the requirements of SCC 32.10.520, 32.10.560, 32.10.570 and 32.10.580.

(2) Criteria for approval of use of wetland mitigation banks:

(a) The following must have been approved by the County and the federal, state and local agencies with jurisdiction:

(i) A memorandum of agreement (MOA) defining guidelines for establishing a wetland mitigation banking program, and

(ii) An implementation manual establishing a wetland mitigation bank at a specific site.

(b) The MOA and/or implementation manual shall include, but not necessarily be limited to, provisions for the following:

(i) The categories of development activities that may use the mitigation bank,

(ii) Specific criteria and standards for use of the mitigation bank,

(iii) Methods for tracking credits,

(iv) An interagency oversight committee composed of representatives from each of the agencies with jurisdiction for the purpose of regulatory review and approval of banking activities,

(v) Permanent management and maintenance to assure the long-term viability of the bank site,

(vi) Professional construction oversight to assure successful construction of the wetland bank site,

(vii) Quantitative and qualitative performance standards,

(viii) Systematic compliance and performance monitoring to determine the degree to which the site meets performance standards,

(ix) A schedule and timeline for compliance and performance monitoring,

(x) Contingency plans,

(xi) Methods to be used to determine the functions and values of replacement wetlands,

(xii) Provisions for assuring the funding of long-term maintenance of the bank and performance of mitigation and monitoring requirements,

(xiii) A description of wetland mitigation ratios to be used and justification for these ratios based upon best available science. Wetland mitigation ratios will be based upon consideration of factors including but not limited to the likelihood of success of the mitigation, the types and quality of wetlands involved, research results, and monitoring results, and

(xiv) The mitigation plan requirements contained in section 32.10.560(2) SCC.

(c) The use of the wetland mitigation bank will result in a net improvement of the overall wetland functions and values in the watershed in which the impacts of the development activity utilizing the wetland mitigation bank will occur. For the purposes of this section, "watershed" means an area identified as a state of Washington water resource inventory area (WRIA) under WAC 173-500-040.

(d) The MOA and/or implementation manual should ensure that when evaluating alternative mitigation sites for development activities the following locations

will be considered in order of preference: 1) on the site of the impact area, 2) upstream of the impact area in the sub-drainage basin, 3) in the sub-drainage basin of the impact area, 4) upstream of the impact area in the WRIA, 5) in the WRIA watershed of the impact area.

(e) The creation and operation of the wetland mitigation bank and development activity which utilizes the wetland bank shall not create unmitigated long term or permanent adverse impacts to the critical functions and values of the critical areas in the sub-drainage basin in which the impacts will occur. Critical functions and values are those listed at section 32.10.110(17) SCC that are important to the long-term ecological viability of the critical areas in the sub-drainage basin.

(3) The director shall make MOA's and mitigation banking implementation manuals available for public review and comment prior to approval.

PASSED this 13th day of April, 1998.

ATTEST:

Sheila McCallister
Asst. Clerk of the Council

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Kirkie Sievers
Chairperson

- APPROVED
- EMERGENCY
- VETOED

DATE: 4/14/98

ATTEST:

Sheila McCallister

Gary Weikel
County Executive

Approved as to form only:

GA
GARY WEIKEL
Executive Director

Deputy Prosecuting Attorney

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