

Chapter 14.255
Critical Areas - General

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14.255.010 Findings

The City Council of Snohomish finds as follows:

- A. Critical areas contain valuable natural resources, provide natural scenic qualities important to the character of the community, perform important ecological functions and processes, and/or present a hazard to life and property. Identification, management, and protection of these areas are, therefore, necessary to protect the public health, safety and general welfare of citizens.
- B. Beneficial biological and physical functions that critical areas provide include, but are not limited to: water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; stormwater conveyance and attenuation; ground water recharge and discharge; erosion control; protection from hazards; historical and

archaeological and aesthetic value protection; and recreation.

- C. The City's critical areas regulations, as set forth in the critical areas code, are designed to implement the comprehensive plan's environmental protection element policies, regarding protecting functions and values of critical areas.
- D. The critical areas code is based on the best available science as set forth in the Steward & Associates Study (May, 2004), prepared for the City by a team of qualified scientific professionals, as well as such state agency publications as the *Example Code Provisions for Designating and Protecting Critical Areas*, prepared by the Washington Department of Community, Trade, and Economic Development (CTED), and the *Guidance Document for the Establishment of Critical Aquifer Recharge Areas Ordinances*, prepared by the Washington Department of Ecology (DOE).
- E. The City deems it particularly important for the critical areas code to give special consideration to preserve or enhance anadromous fisheries, as supported by the City's best available science study.
- F. In addition to the best available scientific information, the Growth Management Act (GMA) also requires the City to consider various growth management policies in promulgating development regulations such as the critical areas code. In the City of Snohomish, the availability of affordable, developable lots will be considerably diminished, if certain regulations in the CTED and DOE recommendations are not modified to be less restrictive in such matters as

wetland or stream buffer widths. Accordingly, where the critical areas code's buffer widths differ from those in the *Example Code Provisions for Designating and Protecting Critical Areas* or in the recommendations of the Department of Ecology, the City finds that such deviations are necessary in order to implement the GMA's policies in support of encouraging economic development, protecting property rights, reducing urban sprawl, increasing affordable housing, and accommodating urban growth. Additionally, the City finds that the best available science identifies no substantial risk to critical areas in enacting these alternative substantive requirements.

14.255.020 Purpose

The City of Snohomish is required by the Washington State Growth Management Act (Chapter 36.70A RCW) to designate environmentally critical areas and to adopt development regulations to assure the conservation of such areas. In compliance with this mandate, the City finds that environmentally critical areas characterize certain portions of Snohomish and its urban growth area. These critical areas include wetlands, habitat conservation areas, critical aquifer recharge areas, geologically hazardous areas, and frequently flooded areas. Accordingly, it is the purpose of the Critical Areas Code to:

- A. Protect the functions and values of ecologically sensitive areas, while allowing for reasonable use of private property, through the application of the best available science.
- B. Implement the Growth Management Act and the natural environment goals of the Comprehensive Plan.

- C. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides, steep slope failures, erosion, seismic events, or flooding.
- D. Protect citizens and the unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, and other fish and wildlife, and their habitats.
- E. Prevent adverse and cumulative environmental impacts to critical areas, direct activities not dependent on critical area resources to less ecologically sensitive sites, and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas and requiring specific mitigation measures to compensate for unavoidable impacts.
- F. Protect species listed as threatened or endangered under the Federal Endangered Species Act of 1973 (16 USC 1531 – 1534) and their habitats.

14.255.030 Critical Areas Code

Chapters 14.255 through 14.280 SMC shall collectively be known as the "Critical Areas Code". Chapter 14.255 SMC shall establish the general framework for Chapters 14.260 through 14.280 SMC. The City Planner shall administer and interpret the Critical Areas Code.

14.255.035 Best Available Science (BAS)

- A. The City of Snohomish shall implement the use of best available science (BAS) in the application of the Critical Areas Code
- B. "Best available science" means

information from research, inventory, monitoring, surveys, modeling and an assessment, which are used to designate, protect, or restore critical areas.

- C. As defined by WAC 365-195-900 through 365-195-925, best available science is derived from a process that includes peer reviewed literature, standard methods, quantitative analysis and documented references to produce reliable information.
- D. The use of best available science pursuant to the critical area code shall be consistent with the following:
1. Protection for functions and values and anadromous fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout.
 2. Best available science to be used must be consistent with criteria. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, which is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925
 3. Characteristics of a valid scientific process. In the context of critical areas protection, a valid scientific process is one that produces reliable

information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. The specific characteristics of a valid scientific process are as follows:

- i. Peer review.
The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline.
- ii. Methods.
The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.
- iii. Logical conclusions and reasonable inferences.
The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented.
- iv. Quantitative analysis.
The data have been analyzed using appropriate statistical or quantitative methods.
- v. Context.

The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

vi. References.

The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

- D. Nonscientific information. Nonscientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information.

14.255.040 Fees

The City shall establish fees to recover its cost of reviewing development proposals, including the cost of engineering review, planning review, inspections, and administration. In addition to the payment of said fees, the applicant shall be responsible for all required reports, assessments, studies, and plans.

14.255.050 Applicability

Unless exempted in SMC 14.255.060, the Critical Areas Code shall apply to all developments within one or more of the following critical areas or their associated buffers or building setback areas, regardless of whether the site has been previously identified as a critical area:

- A. Wetlands as designated in Chapter 14.260 SMC;
- B. Critical aquifer recharge areas as designated in Chapter 14.265 SMC;

- C. Floodplains as designated in Chapter 14.270 SMC;
- D. Geologically hazardous areas as designated in Chapter 14.275 SMC; and
- E. Habitat conservation areas as designated in Chapter 14.280 SMC.

14.255.060 Exemptions

The following activities when occurring in critical areas shall be exempt from the Critical Areas Code, provided that the activity must first be reviewed by the City Planner to confirm that the exemption applies:

- A. Emergency actions immediately necessary to prevent injury or property damage, provided that the action minimizes impact to critical areas and buffers. The person undertaking the action shall notify the City Planner within one (1) working day following commencement of the emergency action. The City Planner shall determine if the action was allowable under this subsection and commence enforcement if not. Within one year of the date of the emergency, the person undertaking the action shall fully mitigate any resulting impacts to the critical area and buffers in accordance with an approved critical area report and mitigation plan.
- B. Normal operation, maintenance, or repair of existing structures, utilities, roads, levees, drainage systems, or similar improvements, including vegetation management, if the action does not alter or increase the impact to or encroach upon the critical area or buffer, and if the action accords with best management practices and maintenance and does not impact an

endangered or threatened species.

- C. Passive outdoor activities, such as recreation, education, and scientific research, that do not degrade the critical area.
- D. Forest practices in accordance with Chapter 76.09 RCW and Title 222 WAC, other than forest practice conversions.
- E. Structural modifications of, additions to, or replacements of, existing legal structures without increasing the impact to the critical area, provided that the City's regulations regarding legal non-conforming uses are complied with and such structural modifications shall not extend further into the critical area or buffer.
- F. Within improved public rights-of-way or private street easements, construction, replacement, or modification of streets, utilities, lines, mains, equipment, or appurtenances, excluding electrical substations, are exempt from the first two "sequencing" methods stated in SMC 14.255.120E, provided that actions that alter a wetland or watercourse, such as culverts or bridges, or that result in the transport of sediment or increased stormwater shall be subject to the following requirements wherever possible:
 - 1. Critical area and/or buffer widths shall be increased equal to the width of the right-of-way improvement, including disturbed areas; and
 - 2. Native vegetation shall be retained and/or replanted, per the City of Snohomish plant material list, along the right-of-way improvement.
- G. Minor utility projects, such as placement of a utility pole, street sign, anchor, or vault, which do not significantly impact critical areas function or values, if constructed using best management practices.
- H. Removal with hand labor and light equipment of invasive or State recognized noxious weeds or plants, as designated by the City Planner and including but not limited to:
 - 1. English Ivy (*Hedera helix*);
 - 2. Himalayan blackberry (*Rubus discolor*, *R. procerus*); and
 - 3. Evergreen blackberry (*Rubus laciniatus*).
- I. Removal of trees, which a qualified arborist, landscape architect, or forester has documented as posing a threat to public safety and which do not provide critical habitat such as eagle perches, provided that removed trees are left on-site.
- J. Measures to control fire or halt the spread of disease or damaging insects, consistent with the State Forest Practices Act, Chapter 76.09 RCW, provided that the removed vegetation shall be replaced with the same or similar species within one year or species in accordance with City of Snohomish plant material list and an approved plan.
- K. Application of herbicides, pesticides, or fertilizers, if necessary, provided that their use shall conform to Department of Fish and Wildlife Management Recommendations and the regulations of the Department of Agriculture and the

U.S. Environmental Protection Agency and that written approval has been obtained from the City Planner.

- L. Minor clearing or digging necessary for surveys, soil logs, percolation tests, and similar activities, provided that critical area impacts are minimized and disturbed areas are immediately restored.
- M. Navigational aids and boundary markers.
- N. Proposed developments that have undergone critical area review at a previous stage of permit review, provided that the earlier permit has not expired and the proposed development has not significantly changed (in order to avoid duplicate review).
- O. Harvesting of wild crops without injuring their natural reproduction, tilling the soil, planting crops, applying chemicals, or altering the critical area.
- P. Conservation measures of soil, water, vegetation, fish, and other wildlife that do not adversely impact ecosystems.
- Q. Required environmental impact remediation.
- R. Existing and ongoing agricultural activities, where the land has not lain idle so long that modifications to the hydrological regime are necessary to resume operations; and
- S. Development within isolated Category III and IV wetlands less than 1,000 square feet in size.
- T. Development within isolated Category III and IV wetlands between 1,000 square feet and 3,000 square feet in area shall be exempt from the normal

sequencing process but shall be fully mitigated as required elsewhere in the critical area requirements.

14.255.070 Review Process

The City Planner’s general sequence for administering this Critical Areas Code shall be per the following table, which shows questions the City Planner shall answer, and actions he or she shall take depending on the answer.

Step 1	Is the development proposal in a critical area or its buffer? The City Planner shall check maps, review the environmental checklist, visit the site, and require scientific determinations as necessary to make this determination.	
	Yes	No
	Go to step 2.	Go to step 4.
Step 2	Is the development proposal exempt per SMC 14.255.060?	
	Yes	No
	Go to step 4.	Require a critical area report. Don’t issue Determination of Completeness until critical area report is received. Reference critical area report in any public notice.
Step 3	Does the proposal, with conditions of approval as necessary, conform to SMC 14.255.120, Substantive Requirements?	
	Yes	No
	Go to step 4.	Go to step 4.
Step 4	Document the review process in a manner appropriate to, and filed with, the permit(s) required for the proposed development, and act on the permit application in accordance with the findings.	

14.255.080 Critical Area Reports

Unless waived by the City Planner on the grounds that the specific information required in this section does not apply to the development in question, critical area reports shall be prepared for non-exempt proposed developments located within critical areas or their buffers. Said critical

area reports shall:

A. Be prepared by qualified professionals as defined in WAC 365-195-905(4). The following list shows the type of critical area report and the related professional discipline.

1. Wetlands: wetland biologist.
2. Critical aquifer recharge areas: hydro-geologist, geologist, or engineer.
3. Floodplains: hydrologist or engineer.
4. Geologically hazardous areas: engineer or geologist.
5. Fish and wildlife habitats: biologist.

B. Incorporate best available science.

C. Cover a study area large enough to understand relationships with important off-site factors and identify any off-site critical area so near that its required buffer covers part of the project site.

D. Contain the following:

1. Name and contact information of the applicant, description of the proposed development, and identification of required permits;
2. Site plan drawn to scale showing critical areas, buffers, existing structures, and proposed structures, clearing, grading, and stormwater management;
3. Characterization of critical areas and buffers;
4. Assessment of the probable impact to critical areas;

5. Analysis of site development alternatives;

6. Description of efforts to avoid, minimize, and mitigate impacts to critical areas pursuant to SMC 14.255.120.E (“sequencing”);

7. Mitigation plans as needed, in accordance with SMC 14.255.100;

8. Evaluation of compliance with this Critical Areas Code’s substantive requirements applicable to the proposed development;

9. Financial guarantees to ensure compliance, such as a performance bond or deposit, if necessary;

10. Additional information as required in the chapter corresponding to the type of critical area;

11. Documentation of who prepared the report and when, with fieldwork and data sheets;

12. Statement specifying the accuracy of the report and assumptions relied upon, and

13. Additional information as required by the City Planner.

14.255.090 Previous Studies

Critical area reports may rely upon, without duplication of effort, valid previous studies prepared for the site, taking into account any change in the site, the proposed development, or the surrounding area.

14.255.100 Mitigation Plan Requirements

If the City allows conformance with this

Critical Areas Code's substantive requirements to be achieved by mitigation pursuant to Step 3 of SMC 14.255.070, the critical area report shall include a mitigation plan consisting of:

- A. An analysis of the anticipated impacts;
- B. A strategy for mitigating the impacts, including site selection factors;
- C. An analysis of the anticipated functions and values that will result from the mitigation, including an assessment of risks;
- D. A review of the best available science relative to the proposed mitigation;
- E. Specific standards for evaluating whether the mitigation is successful;
- F. Detailed construction plans, including:
 - 1. Construction timing;
 - 2. Grading and excavation details;
 - 3. Erosion and sediment control features;
 - 4. Planting plan; and
 - 5. Measures to protect plants until established;
- G. A program for monitoring the mitigation over at least five (5) years, provided that ten (10) years of monitoring are required to ensure successful establishment of all trees and woody shrubs; and
- H. Potential corrective measures should the monitoring indicate standards are not being met.

14.255.110 Independent Review of Critical Area Report

The City Planner may have the critical area report evaluated by an independent qualified professional and/or request consultation from a government agency with expertise. If the report and evaluations disagree, the City Planner shall determine which to utilize, based on which is most consistent with the best available science.

14.255.120 Substantive Requirements

- A. All treatment of critical area shall be in accordance with best available science as defined in WAC 365-195-900 through 195-925, which is hereby adopted by reference, along with the Washington State Department of Community Development's *Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas*.
- B. Critical areas and their buffers shall be left undisturbed, except that the following may be permitted if best management practices are used:
 - 1. Authorized functional restoration or enhancement;
 - 2. In buffers: utility poles and utility lines which do not require excavation or clearing;
 - 3. In the outer 50 percent of buffers: permeable-surfaced walkways, trails, and minimal wildlife viewing structures;
 - 4. Developments for which mitigation is allowed per subsection E; and
 - 5. Other uses specifically authorized by the Critical Areas Code.

- C. No development shall occur which results in a net loss of the functions or values of any critical area except reasonable use variances per SMC 14.255.130.B. The pre- and post-development functional comparison shall be on a per function basis unless otherwise authorized by the Critical Areas Code.
- D. No development shall occur in critical areas and their buffers, which results in an unreasonable hazard to the public health and safety.
- E. These substantive requirements shall be met via one or more of the following methods, listed in preferential sequence (commonly known as “sequencing”). The methods used shall be those which are highest on the list yet consistent with the objectives of the proposed development:
 - 1. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
 - 3. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
 - 4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
 - 5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
 - 6. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
 - 7. Monitoring the hazard or other required mitigation and taking remedial action when necessary. Mitigation for individual actions may include a combination of the above measures.
- F. As a condition of any permit approval, the City may require that:
 - 1. The outer edge of the critical area or buffer be marked, signed, or fenced to protect the resource. Such protection may be temporary, during construction, or permanent such as to protect the resource from livestock or people. The City Planner shall specify the design and sign message if applicable, of such markers, signs, and fencing.
 - 2. The applicant file a notice with the county records and elections division stating the presence of the critical area or buffer and the application of this Critical Areas Code to the property, in order to inform

subsequent purchasers of the property.

3. The critical area and/or buffer be placed in a critical area tract or conservation easement, the purpose of which is to set aside and protect the critical area. The critical area tract or conservation easement shall be:

- a. Held by the City, a homeowner's association, a land trust or similar conservation organization, or by each lot owner within the development in an undivided interest;
- b. Recorded on all documents of title of record for the affected parcels;
- c. Noted on the face of any plat or recorded drawing; and
- d. Delineated on the ground with permanent markers and/or signs in accordance with local survey standards.

G. The City may allow averaging of buffer widths, if a qualified professional demonstrates that:

- 1. Functions and values are not adversely affected;
- 2. The total buffer area is not reduced; and
- 3. At no location is the buffer width reduced more than 40 percent.

H. Unless otherwise provided, buildings and other structures shall be set back a distance of ten feet from the edges of all

critical areas and critical area buffers. The same protrusions into this setback area shall be allowed as the development code allows into property line setback areas.

I. Critical areas and buffers shall not be allowed within any lot of a subdivision and/or short plats unless the plat was vested prior to the effective date and implementation of this ordinance. Subdivision and or/short plats shall show, on their face, any applicable critical area limitations.

J. When any existing regulation, easement, covenant, or deed restriction conflicts with this Critical Areas Code, the one which provides more protection to the critical areas shall apply.

K. When critical areas of two or more types coincide, the more restrictive buffer and requirements shall apply.

L. Subject to approval through the planned residential development process, or approval by the City Planner, depending on who is the applicable decision-maker, in calculating allowable residential units per acre, up to 100% of the acreage of critical areas and buffers may be counted and this density transferred to buildable portions of the site.

M. The substantive requirements unique to the type of critical area shall also be complied with, as set forth in the applicable chapter of the Critical Areas Code.

14.255.130 Variances

The City may grant variances from the Critical Areas Code's substantive regulations in accordance with Chapter 14.70 SMC, if the criteria in A or B below

are met.

A. The variance conforms to the variance criteria stated in SMC 14.70.040, plus the variance:

1. Conforms with the purpose of the Critical Areas Code,
2. Does not impact anadromous fish habitat; and
3. Is justifiable in light of the best available science and the GMA policies referenced in SMC 14.255.010F.

B. The variance is determined to be a reasonable use (conformance with the SMC 14.70.040 criteria not required) in accordance with the following:

1. The application of the Critical Areas Code would otherwise deny all reasonable economic use of the property;
2. The City does not offer to compensate the owner for the denial of reasonable economic use;
3. No other reasonable economic use of the property or development design has less impact on the critical area;
4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare;
5. The proposal conforms to other applicable regulations;
6. Impacts to critical areas are mitigated; and
7. The application is sufficiently

documented (for example, critical area report, mitigation plan, permit applications, and environmental documents) to make a determination regarding these criteria.

14.255.140 Enforcement and Inspections

A. In enforcing violations of the Critical Areas Code per Chapter 14.85 SMC, the City Planner may require a restoration plan prepared by a qualified professional. Historic functions and values, soil configurations, and native vegetation shall be used as a guide for restoration. Flood and geological hazards shall be reduced to the pre-development level.

B. Reasonable access to the development shall be provided to agents of the City for critical area inspections, monitoring, restoration, or emergency action. (Ord. 2083, 2005)