

**Chapter 14.255**  
**CRITICAL AREAS – GENERAL**

Sections:

- 14.255.010 Purpose
- 14.255.020 Critical Areas Code
- 14.255.030 Best Available Science (BAS)
- 14.255.040 Applicability
- 14.255.050 Exemptions
- 14.255.060 Critical Area Reports
- 14.255.070 Previous Studies
- 14.255.080 Mitigation Plan Requirements
- 14.255.190 Independent Review of Critical Area Report
- 14.255.100 Substantive Requirements
- 14.255.110 Critical Area Variances
- 14.255.120 Reasonable Use Variances
- 14.255.130 Enforcement and Inspections

**14.255.010 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 environmentally 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.
- G. While the overall goal of this chapter and Chapters 14.260 –14.280 SMC are to protect environmentally sensitive areas, those goals can conflict with the City’s obligation under the Washington State Growth Management Act to accommodate future growth. Therefore, the regulations in this and the other critical area chapters have been tempered to manage that conflict, including providing for deviations and variances to allow the accommodation of urban growth without encouraging urban sprawl and recognizing property rights, while still protecting the functionality of the critical areas.

**14.255.020 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 Planning Director shall administer and interpret the Critical Areas Code.

**14.255.030 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.
- E. *Nonscientific information.* Nonscientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information.

**14.255.040 Applicability.**

Unless exempted in SMC 14.255.060, the Critical Areas Code shall apply to all development 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.

**14.255.050 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 Planning Director 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 Planning Director within one (1) working day following commencement of the emergency action. The Planning Director 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 14.255.110(E), 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 Planning Director and including but not limited to:
  - 1. English Ivy (*Hedera helix*);
  - 2. Himalayan blackberry (*Rubus armeniacus*, *R. bifrons*);
  - 3. Evergreen blackberry (*Rubus laciniatus*);
  - 4. Bohemian knotweed (*Polygonum x bohemicum*); and
  - 5. Scotch or Scot's Broom (*Sarothamnus scoparius*).
- 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 Planning Director.
- 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.

**14.255.060 Critical Area Reports.**

- A. Unless waived by the Planning Director 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.
- B. All critical area reports shall:
  - 1. 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. The list is illustrative and not intended to be **inclusive**.
    - a. Wetlands: qualified wetland professional.
    - b. Critical aquifer recharge areas: hydro-geologist, geologist, or engineer.
    - c. Floodplains: hydrologist or engineer.
    - d. Geologically hazardous areas: **geotechnical** engineer or geologist.
    - e. Fish and wildlife habitats: biologist.
  - 2. Incorporate best available science.

3. 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.
4. Include the following:
  - a. General Information:
    - i. Name and contact information of the applicant;
    - ii. Name, qualifications, and contact information for the primary author(s) of the critical area report;
    - iii. Description of the proposed project;
    - iv. Identification of all the local, state and/or federal permits required for the project; and
    - v. A vicinity map for the project.
  - b. Site plan drawn to scale showing critical areas, buffers, existing structures, and proposed structures, clearing, grading, and stormwater management;
  - c. Characterization of critical areas and buffers;
  - d. Assessment of the probable impact to critical areas;
  - e. Analysis of site development alternatives. If proposal requires a reduction of a buffer width, the analysis must explain why the need for the reduction was unavoidable;
  - f. Descriptions of efforts to avoid, minimize, and mitigate impacts to critical areas pursuant to SMC 14.255.110.E (“sequencing”);
  - g. Mitigation plans as needed, in accordance with SMC 14.255.090;
  - h. Evaluation of compliance with this Critical Areas Code’s substantive requirements applicable to the proposed development;
  - i. A description of the financial guarantees, if any, that will be required to ensure compliance, pursuant to SMC 14.255.080(G)(1-2);
  - j. Additional information as required in the chapter corresponding to the type of critical area;
  - k. Documentation of who performed the fieldwork and prepared data sheets and when the work was done;
  - l. Statement specifying the accuracy of the report and assumptions relied upon, and
  - m. Additional information as required by the Planning Director.

**14.255.070 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 provided the previous studies have been reviewed by a qualified wetland professional and determined to be still valid or to re-verify the study. The Planning Director, based on the qualified wetland professional’s determination and the City’s professional wetland consultant, may require an updated study or new delineation and assessment be made.

#### **14.255.080 Mitigation Plan Requirements.**

If the City allows conformance with this Critical Areas Code's substantive requirements to be achieved by mitigation as provided for by the Code, a mitigation plan shall be required. The critical area report shall include a mitigation plan consisting of the following elements. Mitigation plans for specific critical areas, as described in Chapters 14.260 through 14.280, may require additional elements specific to those types of critical areas:

- 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 may be required to ensure successful establishment of all trees and woody shrubs unless specifically stated otherwise in the chapter corresponding to the type of critical area. Sureties shall be required as described below to ensure compliance with the mitigation and monitoring program requirements. The monitoring program shall include information about the cost basis used to calculate surety amounts.
  1. Performance Surety. All critical area mitigation and buffer enhancements shall be completed prior to final plat approval and/or building occupancy depending on the type of application. However, when improvement cannot be completed prior to final acceptance due to weather conditions which may negatively affect the success of the project, a performance surety may be used. The surety shall equal one hundred fifty percent (150%) of the cost of the mitigation project, and the required improvements shall be installed in a satisfactory manner within six months or less.
  2. Maintenance Surety. A maintenance surety shall be required on all mitigation and enhancement projects to ensure that the improvement successfully survives the monitoring periods set above.
    - a. The amount of the maintenance surety shall be equal to the total cost of the mitigation projects including:
      - i. The cost for maintenance during the monitoring period; and
      - ii. 120% of the cost for plants and plant installation; and

iii. The cost for the approved monitoring over the full duration of the monitoring period.

b. The term of the surety shall reflect that of the approved monitoring program.

H. Potential corrective measures should the monitoring indicate standards are not being met.

**14.255.090 Independent Review of Critical Area Report.**

The Planning Director 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 Planning Director shall determine which to utilize, based on which is most consistent with the best available science.

**14.255.100 Substantive Requirements.**

- A. All treatment of critical area shall be in accordance with best available science as defined in WAC 365-195-900 through 365-195-925.
- 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, including native vegetation associated with low impact development facilities, removal of invasive species, and trimming of significant trees in a manner consistent with best horticultural practices, that does not negatively impact the trees' health and survivability;
  - 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) of this section; 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 14.255.120(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 Planning Director shall specify the design and sign message, if applicable, of such markers, signs, and fencing.
  2. The applicant record a notice with the **Snohomish County Auditor's Office** 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 are 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 homeowners' 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 reduction of buffer widths if steps are implemented to offset the negative impact of the reduction such as enhancement plantings, a proactive weeding program, placement of the buffer into **a conservation easement** or protected tract and if a qualified professional **confirms in writing** that functions and values of the critical area and buffer are not adversely affected.
- H. 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 the ordinance codified in this chapter. Subdivision and/or short plats shall show, on their face, any applicable critical area limitations.
- I. 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.
- J. When critical areas of two or more types coincide, the more restrictive buffer and requirements shall apply.

- K. Subject to approval through the planned residential development process, or approval by the Planning Director, depending on who the applicable decision-maker is, in calculating allowable residential units per acre, up to 100 percent of the acreage of critical areas and buffers may be counted and this density transferred to buildable portions of the site provided the overall density cap is not exceeded.
- L. 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.

**14.255.110 Critical Area Variances.**

The City may grant variances from the Critical Areas Code's substantive regulations in accordance with Chapter 14.70 SMC, if the variance request:

- A. Conforms to the variance criteria stated in SMC 14.70.040;
- B. Conforms with the purpose of the Critical Areas Code,
- C. Does not impact anadromous fish habitat; and
- D. Is justifiable in light of the best available science and the GMA policies referenced in SMC 14.255.010(G).

**14.255.120 Reasonable Use Variances**

- A. Purpose: The standards and requirements of the Critical Areas Code are not intended and shall not be construed or applied in a manner to deny all reasonable use of private property. The purpose of a Reasonable Use Variance is to ensure no private property owner is denied all reasonable use of their property. If an applicant demonstrates to the satisfaction of the Hearing Examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions. A Reasonable Use Variance is intended as a "last resort" when no plan and/or mitigation can meet the requirements of this chapter and allow the applicant a reasonable viable use of his or her property.
- B. Approval Criteria. Reasonable Use Variances require all of the following criteria be met:
  - 1. That no reasonable use with less impact on the critical area and/or the buffer is feasible and reasonable;
  - 2. There is no feasible and reasonable on-site alternative to the proposed activity or use that would allow reasonable use with less adverse impacts to the critical area and/or buffer. Feasible on-site alternatives shall include, but are not limited to:
    - a. Relocation of proposed structures;
    - b. Reduction in proposed density or building size;
    - c. Phasing of project implementation;
    - d. Change in timing of activities; and
    - e. Revision of road or parcel layout or related site planning considerations;

3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;
  4. The proposed activity or use will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions, and consideration has been given to best available science;
  5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;
  6. The proposed activity or use complies with all local, state, and federal laws and the applicant has applied for or obtained all required state and federal approvals; and
  7. The inability to derive reasonable use is not the result of actions by the applicant in segregating or dividing the property.
- C. If a reasonable use variance results in a loss in non-degraded buffer area:
1. The remaining buffer shall be enhanced, in a manner proposed by a qualified wetland professional and approved by the Planning Director, to reduce significant adverse impacts to the critical area; or
  2. Off-site buffer mitigation shall be required to compensate at a 1:1 ratio for the area of buffer reduced. Off-site mitigation may be:
    - i. Located on adjacent parcels, provided the mitigation area is placed within a Native Growth Protection Area tract or a conservation easement; or
    - ii. Created by purchasing credits from an off-site wetland mitigation bank certified by the State of Washington or other appropriate agency.
- D. Allowed Reductions for Single-Family Residential Reasonable Use Lots. Reasonable use variances shall allow the development of a modest (in terms of floor area, footprint size, height, and exterior amenities) single-family residential home located on a lot that is partially or completely within a critical area or its buffer.
1. Building setbacks, pursuant to Chapter 14.210 – Dimensional and Other Requirements, may be reduced by up to fifty percent where the applicant demonstrates to the city that the development cannot meet the city’s code requirements without encroaching onto a critical area or its buffer.
  2. Development on single-family residential reasonable use lots shall:
    - a. Leave at least seventy percent (70%) of the lot undisturbed to protect the critical areas.
    - b. Have a maximum building footprint of one thousand five hundred (1,500) square feet.

- c. Include the least amount of impervious area necessary to provide vehicular access provided it provides the shortest and most direct access to the house with minimal encroachment or impact into the critical area or buffer. When determining if the access has minimum encroachment or impact on a critical area the use of bridges and open bottom culverts shall be considered minimal impact.
  - d. Include yard areas only if they do not encroach into the critical area or buffer and do not require a buffer width reduction to accommodate the yard area.
- E. Allowed Reductions for Multi-family, Commercial, and Industrial Reasonable Use Lots. Reasonable use variances shall allow for the economically viable development of lots with a land use designation of Multi-family Residential, Commercial or Industrial on a lot that is partially or completely within a critical area or its buffer.
- 1. Building setbacks, pursuant to Chapter 14.210 – Dimensional and Other Requirements, may be reduced by up to fifty percent (50%) where the applicant demonstrates to the city that the development cannot meet the city’s code requirements without encroaching onto a critical area or its buffer.
  - 2. **For commercial and industrial projects,** the number of required parking stalls may be reduced by up to forty percent (40%) if the applicant can demonstrate that the reduction would not negatively affect the business or create spillover parking onto city streets.
- F. Reasonable use lots shall not be subdivided unless there is sufficient area to construct all buildings, driveways, landscaping, and yards areas without intruding on the critical area or buffer.

**14.255.130 Enforcement and Inspections.**

- A. In enforcing violations of the Critical Areas Code per Chapter 14.85 SMC, the Planning Director 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.