

Critical Area Regulations (Ordinance 24-097) Background and Considerations for Amendments Still Being Drafted

COUNCIL STAFF PRESENTATION TO THE
SNOHOMISH COUNTY COUNCIL
JANUARY 15, 2025 PUBLIC HEARING

Background

- Planning and Development Services proposed **Ordinance 24-097**
- **Ord 24-097 increases site-specific** critical area protections (mostly)
 - Increasing buffers for Type F streams without anadromous fish or resident salmonids
 - Increasing several mitigation ratios for where impacts do occur
 - Changing rating & categorization guidance = Some streams and wetlands would have more protection
 - Eliminating buffer reductions for use of tracts and fences -- **See Amendment**
 - Reducing exiting options for buffer averaging -- **See Amendment**
 - Reducing allowance for filling and mitigating certain small wetlands -- **See Amendment**
- **Amendment 1** would retain several **existing** provisions that allow
 - Flexibility for buffer averaging
 - Incentives to use tracts and fences to protect against non-permitted activities
 - Fill and mitigation of small wetlands

Key Concepts

Critical Areas

- (a) Wetlands;
- (b) Aquifer recharge areas;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

Best Available Science

An undefined term of art with a process outlined in Chapter 365-195 of Washington Administrative Code (WAC) that allows for consideration of both scientific and non-scientific information

Implement

Development regulations must have sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan (WAC 365-196-800)

Balancing Act

- Balancing Act: Regulations must protect critical areas and must implement the comprehensive plan
- Goal: Provide County Council with **information** to help decide

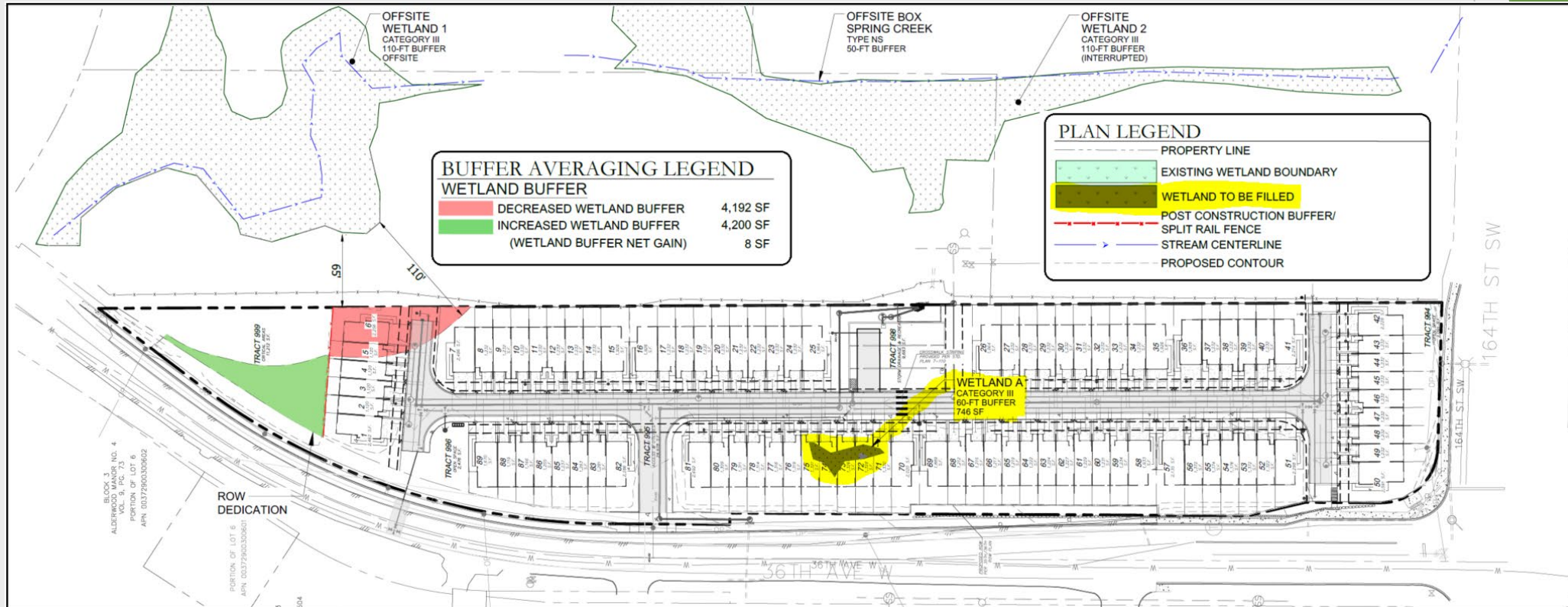


State Level Guidance

- ▶ **Ecology 2022 Wetland Guidance from Assumes the Following:**
 - ▶ The buffer area is **well vegetated with native species** (page 21)
 - ▶ A “**moderate risk**” approach to protection (page 20)
 - ▶ Adopting narrower buffers represents a higher-risk approach, and **jurisdictions need to be prepared to justify** (page 20)

- ▶ **Commerce 2023 Guidance in Washington Administrative Code (WAC)**
 - ▶ **Best Available Science must be considered** (Chapter 365-195 WAC)
 - ▶ Criteria for determining which information is “the best available science” was updated in 2023 (WAC 365-195-905)
 - ▶ **Nonscientific information “may provide valuable information** to supplement scientific information, but it is not an adequate substitute for scientific information.” (WAC 365-195-905(5)(c))
 - ▶ **Criteria for addressing inadequate scientific information** (WAC 365-195-920) was updated in 2023

Tract, Buffer Averaging, and Small Wetland



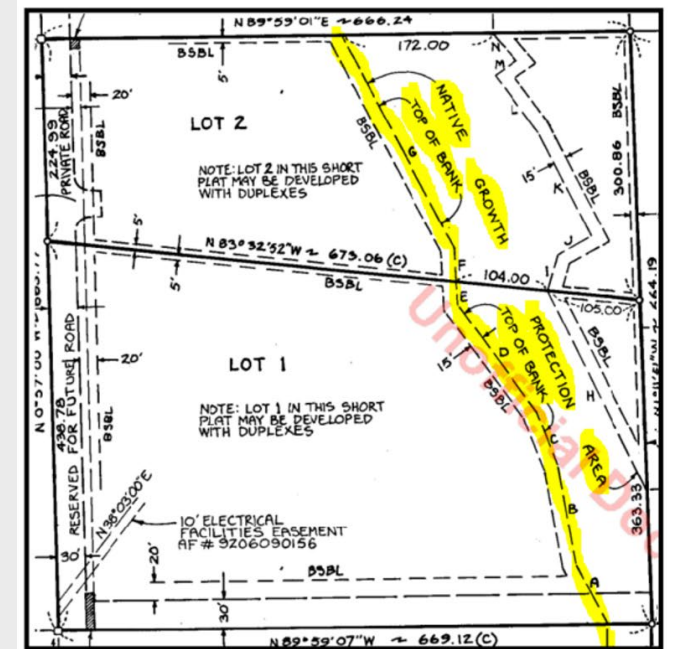
- ▶ Starting Site Conditions: Heavy disturbance due to site use as homeless camps was observed in the northern portion of the site; manmade paths and large amounts of debris and trash was present throughout the site. Additionally, non-native invasive species, most notably Himalayan blackberry, and English ivy, have dominated large portions of the site. English ivy appears to be choking out mature deciduous trees onsite, creating a break in the canopy.
- ▶ Wetland A is dominated by salmonberry, non-native invasive Himalayan blackberry, creeping buttercup (*Ranunculus repens*), and non-native invasive English ivy.
- ▶ Wetland A Mitigation: 746 square feet + buffer = 7,045 sq ft of mitigation credits purchased. (PDS File 22-116867 PDS/SPA)

Tracts & Easements (part 1)

- ▶ Current regulations are mostly working

“Overall, the County’s [critical area] regulations are helping to preserve the functions and values associated with critical areas given significant growth and development. [...] Permit protections [existing protections already in code] were found largely to be effective, meaning unpermitted actions, natural events, and other stressors are likely the major causes of critical area changes.” (Emphasis added. Snohomish County, 2024. *Critical Area Regulations Monitoring Report*. Page 12.)
- ▶ Common ownership in one or a few tracts provides better protection than easements on individual lots

“[B]uffers that that were owned by many different lot owners were more likely to be degraded over time” (Washington State Departments of Ecology and Fish and Wildlife, 2005. *Wetlands in Washington State Volume 2*. Page 8-45; citing Cooke in Castelle et al. 1992)



Example of Protective Easement on Individual Lot and Unpermitted Construction

Tracts & Easements (part 2)

- ▶ Homeowners associations have responsibility to protect tracts and ability to enforce through:
 - ▶ Covenant mechanisms and/or
 - ▶ With assistance of PDS Code Enforcement Division
- ▶ Enforcement of unpermitted activity on privately owned easements relies solely on the PDS Code Enforcement Division
- ▶ Outcomes
 - ▶ Easement Example (Previous): Although the construction activity in easement example was part of an investigation by Code Enforcement, resolution did not involve restoration of the critical area and buffer
 - ▶ Tract Example (Right): The parties were able to achieve resolution of this situation without resorting to involvement of the Code Enforcement division



Encroachment into a Tract Owned by an HOA

Tracts & Easements (part 3)

- ▶ SCC 30.62A.320(1)(f)(i) currently provides for:
“Up to a 15 percent reduction of the standard buffer is allowed when the buffer and associated aquatic critical area are located in a separate tract [...]”
- ▶ Ordinance 24-097 proposes to strike .320(1)(f)(i), resulting in:
 - ▶ Larger protective buffers = greater functions and values at location of development
 - ▶ Fewer tracts = weaker enforcement of non-permitted activity
 - ▶ Less development capacity = more impacts elsewhere due to Urban Growth Area expansion
- ▶ Amendment 1 would retain .320(1)(f)(i) provisions, with results reversed

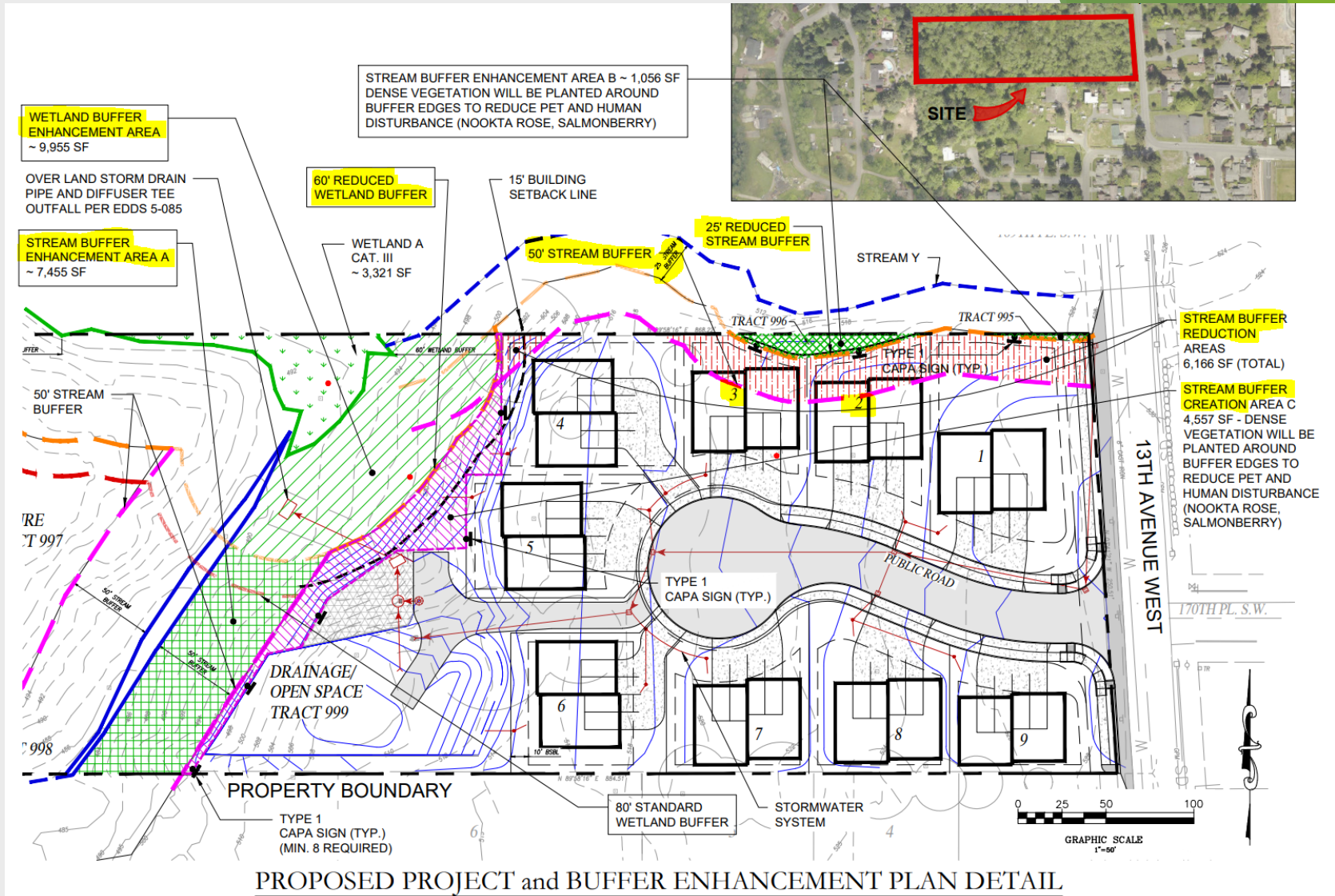


A Successful Wetland Tract

Buffer Averaging (dual critical areas)

► Buffer Averaging Example:

- Example of dual critical areas
- Smaller buffers for stream on north
- Larger buffers for wetland/stream on west
- Increased overall water storage capacity
- Erosion at stream may be increased
- Tree retention increased at wetland, decreased along stream, likely net increase



Trade Offs

- ▶ Site specific impacts vs plan level impacts to housing capacity and Urban Growth Area sizing
- ▶ Information capacity effects incomplete
 - ▶ Planning Commission asked PDS to estimate effect of wider stream buffers as per recommendations from Washington Department Fish and Wildlife
 - ▶ Result: 1,200 Housing Units or 2.4% of unincorporated urban capacity (Index File 2.0083)
 - ▶ Other information regarding capacity information currently not available
 - ▶ No information on effect of buffer mitigation scenarios
 - ▶ No information on cities that may adopt county codes (SB 5374)
 - ▶ No information on fill & mitigation of small wetlands

Questions

Any
Questions?

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