

2004 Clallam County Growth Management Update

Update to Clallam County Critical Area Code Staff Report to the Clallam County Planning Commission

November 5, 2004

*Prepared by the Clallam County Department of Community Development
223 East Fourth Street, Port Angeles (360) 417-2321*

Case Number: 2004-0002

Initiated By: Clallam County

Subject: Updates to the Clallam County Critical Areas Ordinance, Chapter 27.12 C.C.C.

Geographic Area: Unincorporated Clallam County

Planning Commission Public Hearing Date: November 17, 2004

Board of Clallam County Commissioners Public Hearing Date: *To be Scheduled After Receive Recommendation from Planning Commission.*

1.0 Issue

Development regulations to protect critical areas are a requirement of the Washington State Growth Management Act (GMA), RCW 36.70A. Clallam County adopted a critical areas ordinance (CAO) under Ordinance 681, 1999, to replace interim controls previously in place since 1992. An appeal of the CAO was filed with the Western Washington Growth Management Hearings Board (WWGMHB) on March 1, 2000, with the filing of a Petition for Review (PFR). An amended PFR was filed on April 3, 2000. A Hearing on the Merits of the appeal was held on October 24, 2000, before the WWGMHB. A Final Decision and Order (Case No. 00-2-0008) was issued by the WWGMHB on December 19, 2000.

Clallam County adopted changes to the CAO (Ordinance No. 709, 2001) on June 26, 2001 in response to the Final Decision and Order of the WWGMHB. The revised CAO was again reviewed by the WWGMHB at a Compliance Hearing combined with a Hearing on the Merits on October 4, 2001 (Case No. 01-2-0020). Following conclusion of the hearing, the WWGMHB issued their Final Decision and Order on October 26, 2001.

Clallam County filed an appeal of the Final Decision and Order of the WWGMHB in Superior Court (Superior Court of Washington, Clallam County, No. 02-2-00035-8). The County maintained in its appeal that the WWGMHB had 1) erroneously interpreted the law, and 2) had reached a decision that was not supported by the evidence that is substantial when viewed in light of the whole record.

A Court decision on this matter was issued on June 2, 2003. The Court found that the WWGMHB had erred on three (3) areas of their decision. However, the decision did uphold the WWGMHB's findings in the following respects:

1. "That the County's definition for minor new development subject to reduced buffer requirements adjacent to Type 1-5 waters was not in compliance and substantially interfered with the GMA."
2. "That the buffer exemption for Type 5 streams less than 500 feet was not in compliance with the GMA."
3. "That an inconsistency between CCC 27.12.035(7) and 27.12.040 existed and therefore was not in compliance with the GMA."

The County's CAO has been validated with respect to incorporation of BAS related to local circumstances. In the Superior Court's Decision Document, the County's efforts were described as follows:

"...local conditions often dictate the applicability of BAS. BAS does not stand alone oblivious to existing conditions but considers and balances the many complexities of the real world. Clallam County has thoughtfully and carefully used BAS in this manner to develop its regulations and policies." [Memorandum Opinion, No. 02-2-00035-8]

Consistent with this finding, the WWGMHB, with the exception of the areas currently under appeal, had also found the County had successfully accomplished the incorporation of BAS in the CAO as evidenced in their Final Decision and Order Document as follows:

"Except in the limited instances noted below, Clallam County has done an excellent job of recognizing, modifying, synthesizing and applying BAS to its local circumstances." [WWGMHB, Final Decision and Order, No. 00-2-0008]

2.0 Proposed Amendments

Clallam County is proposing the following updates to the Clallam County Critical Areas Code, Chapter 27.12 CCC, to comply with the Superior Court decision:

1. Amend the definition of "minor new development" under CCC 27.12.900 (39) (a).
2. Delete the buffer exemption for Type 5 Waters less than 500 feet in length under CCC 27.12.315 (1).
3. Remove inconsistency between CCC 27.12.035 (7) regarding existing and ongoing agricultural use exemption provisions and other exemptions under CCC 27.12.040 regarding pre-existing uses.

2.1 Amend Definition of Minor New Development

The Court concurred with the WWGMHB (or Board) that the County's definition for Minor New Development (CCC 27.12.900 (39) (a)) subject to reduced buffer requirements adjacent to Type 1-5 waters (CCC 27.12.315) did not comply and substantially interfered with the GMA. Specifically, the Court stated:

"The Board found that the County's definition for Minor New Development (CCC 27.12.900 (39) (a)) subject to reduced buffer requirements adjacent to Type 1-5 waters (CCC 27.12.315) did not comply and substantially interfered with the GMA. In particular,

the Court cites that the WGMHB found non-compliance with the GMA "...as to rural lots less than 5 acres in size having a reduced buffer width but still allowing a 4,000 square foot print in a 20,000 square foot clearing area." (Compliance Order, page 7). It was the Board's conclusion that the BAS may require the County to reduce the footprint and clearing areas for lots smaller than 5 acres and that such analysis was necessary.

BAS is again the issue. The total impervious area (TIA) was an important consideration by Christopher May. Both the County and the Board rely on the May study. Both arrived at different conclusions. After consulting the study, the Court finds that the Board's conclusion was supported by substantial evidence in the record. The County has failed to provide a proper analysis for parcels less than 5 acres and the Court is not satisfied from BAS that such an analysis is not indeed necessary. Furthermore, the May study does not support the County's position that the TIA must be viewed on a county-wide basis. The focus is on each stream and the ecosystem for that stream."

"In previous studies a TIA of about 10% has been identified as the level at which impairment of the stream ecosystem begins..." (May study, page 52) (emphasis added).

[Clallam County Superior Court, Memorandum Opinion No. 02-2-00035-8]

To correct this compliance issue, the Planning Commission proposes gathering public testimony on two alternative amendments to the minor new development definition under CCC 27.12.900 (35) (a) as follows:

Alternative One

(39) "Minor new development" means the following activities are considered minor new development:

(a) Construction or placement of a single-family dwelling and associated appurtenances, including a garage, deck, driveway, utilities, fence, grading not exceeding 250 cubic yards, and clearing not exceeding 20,000 square feet in area; provided, that all structures combined on a given parcel have a total footprint of less than 4,000 square feet and the parcel is 5 acres (or 1/128 of a standard section subdivision) or larger in size or the residential density is equal to or less than 1 dwelling unit per five acres; provided further, that an associated home enterprise as defined and approved under CCC Title 33, Clallam County Zoning Code, is also considered to be minor new development.

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Alternative Two

(39) "Minor new development" means the following activities are considered minor new development:

(a) Construction or placement of a single-family dwelling and associated appurtenances, including a garage, deck, driveway, utilities, fence, grading not exceeding 250 cubic yards, and clearing not exceeding 20,000 square feet in area; provided, that the cumulative total impervious surface area is less than 10% of the gross parcel size; provided further, that an associated home enterprise as defined and approved under CCC Title 33, Clallam County Zoning Code, is also considered to be minor new development.

Deleted: all structures combined on a given parcel have a total footprint of less than 4,000 square feet

Any amendment to the "minor new development" definition will change what is defined as "major new development" under CCC 27.12.900 (35), since the latter excludes new development defined as "minor new development." The full text of the minor new development definition and

proposed two alternative amendments to this definition, and the related CAO definition for “major new development,” are found under Appendix I.

2.2 Delete Type 5 Waters Buffer Exemption

The Court concurred with the WWGMHB (or Board) that the County’s exemption for Type 5 streams less than 500 feet from the buffer protection standards under CCC 27.12.315 (1) is not in compliance with the GMA. Specifically, the Court stated:

The County’s CAO provides a buffer exemption for Type 5 streams less than 500’ in length. The County contends that it relied on studies finding that streams less than 500’ were too short to provide a quantity or velocity of water that would accelerate erosion and impact downstream flooding if buffers were not protected. The County also indicates that there are other provisions of the CAO which protect Type 5 streams shorter than 500’.

The Board found that the report relied upon by the County did not support its assertion. In other words there was no scientific support in the record for such an exemption. After reviewing the record, the Court does not find clear support for the County’s position. Therefore, the Board’s finding in this regard was not clearly erroneous and was supported by substantial evidence in the record. [Clallam County Superior Court, Memorandum Opinion No. 02-2-00035-8]

To correct this compliance issue, the Planning Commission proposes deleting the CAO exemption that Type 5 Waters less than 500 feet in length are not subject to the buffer protection standards under CCC 27.12.315 (1), Table 6, as shown below:

Table 6. Aquatic Habitat Conservation Area Buffers

Designation	Buffer Width for Major New Development and Land Divisions*	Buffer Width for Minor New Development**
Aquatic Habitat Conservation Area		
Type 1 Waters – Marine, Streams and Lakes	150 feet	Equivalent to the setback set forth by the Shoreline Master Program, as it applies and as hereafter amended***
Type 2 Waters	150 feet	65 feet
Type 3 Waters	100 feet	60 feet
Type 4 Waters	50 feet	50 feet****
Type 5 Waters	50 feet	50 feet****

* Buffers shall be measured from OHWM as specified above, and shall also extend to the outer edge of any associated, frequently flooded area.
 ** Buffers shall be measured from the required measurement from the OHWM as specified above.
 *** Except for the Dungeness River which shall be a minimum of seventyfive (75) feet.
 **** Buffers may be reduced down to a minimum twenty-five (25) feet through the buffer averaging process set forth under CCC 27.12.730.

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The full text of the CCC 27.12.315 (1), Buffers, associated with the above proposed change is found under Appendix II.

2.3 Clarify Inconsistency between CCC 27.12.035(7) and CCC 27.12.040

The Court concurred with the WWGMHB (or Board) that an inconsistency between CCC 27.12.035 (7) and CCC 27.12.040 exists and therefore is not in compliance with the GMA. Specifically, the Court stated:

CCC 27.12.035(7) details the exemption for existing and ongoing agricultural use and that CCC 27.12.040 details the circumstances under which other pre-existing uses could be exempted. In particular .040 states: "All uses or structures that were lawfully established prior to the effective date of this ordinance may be continued." This provision does not require any permission from the County. The Board reasoned that .040 might provide a loophole to .035(7) and therefore that it did not comply with the GMA. The County argued that the Board must apply the general rules of statutory construction and that there is no inconsistency between the two provisions.

The Respondents counter that .035(7) and .040 will not necessarily be read in conjunction and that a preexisting agricultural user might well read .040 and believe that agricultural use can continue without the restrictions on such use by .035(7).

It is fundamental that any regulations under the GMA be clear and unambiguous. The two provisions in question might well provide confusion which could result in an unintentional violation by a citizen of the County. In turn, the critical areas affected might be damaged as a result of confusion over which provision of the ordinance applies.

The Court finds that the Board was correct and its decision in this regard was not clearly erroneous. It would take little effort on the part of the County to correct the apparent inconsistency. [Clallam County Superior Court, Memorandum Opinion No. 02-2-00035-8]

To correct this compliance issue, the Planning Commission proposes amending CCC 27.12.040, Pre-existing uses, as follows:

27.12.040 Pre-existing uses.

All uses or structures that were lawfully established prior to the effective date of this ordinance **and are consistent with CCC 27.12.035** may be continued. However, any development regulated by this chapter to alter, expand, replace, or reconstruct, or otherwise increase the nonconformity of a pre-existing use or structure that is located within a critical area or its buffer and does not meet the standards set forth by this chapter shall be subject to the standards of this chapter, as provided for in this section, and in addition to other standards set forth by the County Code. Clallam County shall review such development proposals and determine if the proposed development conforms with the standards of this chapter, or if the proposal increases the nonconformity of the existing development...

The full text of the CCC 27.12.040, Pre-existing uses, with the above proposed change and the text of .035, Exemptions, related to the proposed change is found under Appendix III.

3.0 Analysis

The proposed changes described under Section 2.0 of this report are intended to address the three issues the Court found the WWGMHB did not error in finding Clallam County in non-compliance with the GMA. The GMA requires that local jurisdictions to include best available science (BAS) in developing policies and development regulations to protect the functions and values of critical areas, with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries (RCW 36.70A.172 (1)).

The proposed CAO amendments consider the BAS presented and deliberated in the record before the Court and WWGMHB and the decision of the Court described under *Clallam County Superior Court, Memorandum Opinion No. 02-2-00035-8*. In light of this record, staff feels the proposed updates address the non-compliance issues and BAS considered. Staff is not aware of any new analysis or BAS to refute the Court's decision.

4.0 Recommendation

Based on the proceeding analysis, staff recommends approval of the proposed amendments described in Section 2.0 of this Report. In terms of the two recommended alternatives to amend the definition of minor new development presented under Section 2.1 of the Report, staff recommends adoption of Alternative Two. Alternative Two specifically addresses the Court and WWGMHB decision supporting limiting total impervious area as an important consideration. Adoption of this alternative would also appear to provide an incentive to reduce the footprint of impervious surfaces on individual parcels related to construction of single-family homes and related appurtenances, particularly on lots 5 acres or less in size.

Appendix I
Complete text of Minor and Major New Development
Definitions and Proposed Alternative Amendments

Major New Development

(35) "Major new development" means any new development that is not considered **minor new development (emphasis added)**, including but not limited to:

- (a) Clearing, grading or filling one acre or greater in area;
- (b) Zoning conditional use permits required under CCC Title 33, Clallam County Zoning Code;
- (c) Any new commercial or industrial development authorized under Chapter 33.34 CCC or Chapter 33.35 CCC, Clallam County Zoning Code, except when authorized as a home enterprise activity consistent with CCC Title 33, Clallam County Zoning Code;
- (d) Any structure, regardless of use with a footprint in excess of 4,000 square feet;
- (e) Any land division pursuant to CCC Title 29, Clallam County Land Division Code.

Minor New Development and Proposed Amendment – Alternative One

(39) "Minor new development" means the following activities are considered minor new development:

- (a) Construction or placement of a single-family dwelling and associated appurtenances, including a garage, deck, driveway, utilities, fence, grading not exceeding 250 cubic yards, and clearing not exceeding 20,000 square feet in area; provided, that all structures combined on a given parcel have a total footprint of less than 4,000 square feet and the parcel is 5 acres (or 1/128 of a standard section subdivision) or larger in size or the residential density is equal to or less than 1 dwelling unit per five acres; provided further, that an associated home enterprise as defined and approved under CCC Title 33, Clallam County Zoning Code, is also considered to be minor new development.
- (b) Construction and practices normal or necessary for agriculture, including agriculture service roads and utilities, construction of an agriculture building less than 4,000 square feet in size used exclusively for agriculture; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of wetlands or streams by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary agriculture;
- (c) Clearing, grading or filling less than one acre not associated with residential development or agriculture; provided, that mineral extraction is not involved; provided further, that no such activity shall occur within critical areas or their associated buffers inconsistent with this chapter.

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Minor New Development and Proposed Amendment – Alternative Two

(39) "Minor new development" means the following activities are considered minor new development:

- (a) Construction or placement of a single-family dwelling and associated appurtenances, including a garage, deck, driveway, utilities, fence, grading not exceeding 250 cubic yards, and

clearing not exceeding 20,000 square feet in area; provided, ~~that the cumulative total impervious surface area is less than 10% of the gross parcel size~~; provided further, that an associated home enterprise as defined and approved under CCC Title 33, Clallam County Zoning Code, is also considered to be minor new development.

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(b) Construction and practices normal or necessary for agriculture, including agriculture service roads and utilities, construction of an agriculture building less than 4,000 square feet in size used exclusively for agriculture; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of wetlands or streams by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary agriculture;

(c) Clearing, grading or filling less than one acre not associated with residential development or agriculture; provided, that mineral extraction is not involved; provided further, that no such activity shall occur within critical areas or their associated buffers inconsistent with this chapter.

Appendix II
Complete text of CCC 27.12.315 (1), Buffers, and Proposed Amendments

27.12.315 Protection standards for aquatic habitat conservation areas.

Those regulated uses identified in this subsection within the jurisdiction of designated aquatic habitat conservation areas shall comply with the performance standards outlined in this section:

(1) Buffers.

(a) Buffer Width. Except as otherwise allowed, buffers shall be maintained along all aquatic habitat conservation areas as noted in Table 6 below. The buffer shall not be altered except by a general exemption, certificate of compliance, variance, or reasonable use exception approval, as authorized by this chapter; provided, that such alterations meet all other standards for the protection of aquatic habitat conservation areas.

Buffer distances shall be measured from the ordinary high water mark (OHWM) or from the top of the bank where the OHWM cannot be identified unless otherwise specified by this chapter. The distance of the buffer shall be increased to include streamside wetlands which provide overflow storage for storm waters, feed water back to the stream during low flows or provide shelter and food for fish. In braided channels, the OHWM or top of bank shall be defined to include the entire stream feature.

Table 6. Aquatic Habitat Conservation Area Buffers

Designation	Buffer Width for Major New Development and Land Divisions*	Buffer Width for Minor New Development**
Aquatic Habitat Conservation Area		
Type 1 Waters – Marine, Streams and Lakes	150 feet	Equivalent to the setback set forth by the Shoreline Master Program, as it applies and as hereafter amended***
Type 2 Waters	150 feet	65 feet
Type 3 Waters	100 feet	60 feet
Type 4 Waters	50 feet	50 feet****
Type 5 Waters	50 feet	50 feet****

* Buffers shall be measured from OHWM as specified above, and shall also extend to the outer edge of any associated, frequently flooded area.
 ** Buffers shall be measured from the required measurement from the OHWM as specified above.
 *** Except for the Dungeness River which shall be a minimum of seventy-five (75) feet.
 **** Buffers may be reduced down to a minimum twenty-five (25) feet through the buffer averaging process set forth under CCC 27.12.730.

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(b) Buffers that are in their natural state should not be altered and should remain in their natural condition, and enhanced whenever possible.

(c) Aquatic habitat conservation areas and associated buffers that have been altered and have lost ecological functions and values are encouraged to be restored in order to replace these lost functions. Clallam County shall provide information or technical expertise, where possible, in facilitating restoration activities, including referring interested property owners to various restoration information, efforts and funds. Prior to issuance of a development permit that

is proposed adjacent to degraded critical areas or buffers, the property owner shall agree to undertake restoration activities or authorize such activities to occur, through an appropriate, approved legal device such as a conservation easement that is granted to a conservation program or restoration effort, or by legal, written agreement with restoration agencies or groups.

(d) Buffer Averaging or Reduction. Buffer widths may be modified or reduced by the review authority through buffer averaging or a variance approval. Such requests shall be processed in accordance with Part Seven of this chapter; provided, that buffers cannot be reduced to less than fifty (50) feet at any point except through buffer averaging or a reasonable use exception pursuant to Part Seven. Mitigation for buffer averaging, variance, or reasonable use exception shall include restoration of degraded aquatic habitat conservation areas and/or associated buffers in order to increase the ecological function of the critical area.

(e) The depth of the buffer may be increased by the review authority, not to exceed 300 feet, whenever a development proposal has known locations of endangered or threatened species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species; or is located within landslide or erosion hazard area.

(f) Shorelines of the State. All development subject to the Shoreline Management Act, Chapter [90.58](#) RCW and the Clallam County Shoreline Master Program shall be consistent with said regulations, as now or hereafter amended.

(g) Hazard Tree Removal. Where a threat to human life or property is demonstrated, the Administrator may allow the falling of a danger or hazard tree subject to the following criteria: (i) tree removal is the minimum necessary to balance the protection of the critical area and its buffer with protection of life and property; and (ii) planting of a tree may be required to assure habitat protection.

Appendix III
Complete text of CCC 27.12. (035 and 040)
And Proposed Amendments

27.12.035 Activities not regulated by this chapter – Exemptions.

The following developments are exempt from the requirements of this chapter and do not require a certificate of compliance; provided, that best management practices are incorporated where practicable and necessary in order to avoid impacts to critical areas:

(1) Outdoor recreation such as bird watching, boating, bicycling, canoeing, fishing, hiking, horseback riding, hunting, jogging, photography, swimming, and similar activities not requiring clearing or grading.

(2) Emergency work when done to protect life or property and authorized by the County Board of Commissioners. An “emergency” is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter.

(3) Construction of wildlife nesting structures not involving clearing or grading.

(4) Education and scientific research projects which will have no damaging effect upon the environment.

(5) Site investigation work (e.g., soil surveys, soil logs) or other related activities necessary for designating critical areas.

(6) The placement of temporary or permanent field stakes or monuments for survey purposes, delineating critical areas and buffers, or marking of property lines or corners pursuant to CCC Title [29](#).

(7) Existing and ongoing agriculture that was conducted prior to the effective date of this chapter on lands designated as critical areas or their associated buffers; provided, that such lands are classified as farm and agricultural land pursuant to Chapter [84.34](#) RCW; provided further, that all activities occurring on such lands employ best management practices (BMPs). For the purposes of this exemption, acceptable BMPs shall include: (a) activities carried out consistent with farm plans issued and authorized by the Natural Resources Conservation Service (NRCS); (b) activities that demonstrate consistency with total maximum daily loads (TMDL) established by the Department of Ecology for specific operations; and/or (c) activities that demonstrate consistency with standard BMPs published by the NRCS, as now or hereafter amended. Written confirmation by the administering agency that applicable BMPs are being met will constitute evidence of eligibility for this exemption. (See also CCC [27.12.025\(7\)](#)).

(8) Normal repair and routine maintenance and operation of residences, landscaping, utilities, roads, trails, irrigation and drainage ditches, and fish ponds which were lawfully constructed, approved, or established prior to the effective date of this chapter; provided, that no expansion results.

(9) Operation and maintenance of all electric facilities, lines, equipment or appurtenances, water and sewer lines; natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances, except for power, water, and sewer substations and pump sites or new utilities within designated frequently flooded areas; provided, that the standards specified in Part Five of this chapter are met. For the purposes of this chapter, operation and maintenance shall include those usual acts necessary for the continued use of existing services in their establish locations. Replacement, expansion, relocation or placement of new utility service lines shall be subject to the standards of this chapter, as applicable.

(10) State forest practices conducted pursuant to Chapter [76.09](#) RCW. This exemption does not apply to Class IV – general (conversions), or forest practices occurring within designated urban growth areas, or forest practices designated as areas likely to convert through a memorandum of understanding between Clallam County and the Washington Department of Natural Resources, as applicable.

(11) Normal and nondestructive pruning and trimming of vegetation for maintenance purposes, or thinning of limbs of individual trees to provide for a view corridor or removal of non-native vegetation and replacement with native vegetation; provided, that increased erosion or landslide potential or negative impacts to the critical area do not result.

27.12.040 Pre-existing uses.

All uses or structures that were lawfully established prior to the effective date of this ordinance **and are consistent with CCC 27.12.035** may be continued. However, any development regulated by this chapter to alter, expand, replace, or reconstruct, or otherwise increase the nonconformity of a pre-existing use or structure that is located within a critical area or its buffer and does not meet the standards set forth by this chapter shall be subject to the standards of this chapter, as provided for in this section, and in addition to other standards set forth by the County Code. Clallam County shall review such development proposals and determine if the proposed development conforms with the standards of this chapter, or if the proposal increases the nonconformity of the existing development.

(1) Expansions or Minor Changes. Expansions or minor changes to a pre-existing use or structure which does not conform to the standards of this chapter, may be allowed subject to the standards set forth by this subsection. Those proposals that can not meet the provisions of this subsection shall not be permitted unless a variance or reasonable use exception approval is granted by the applicable review authority pursuant to this chapter.

(a) If a pre-existing use or structure is located within a buffer set forth by this chapter, the pre-existing use may be continued, maintained, remodeled, or reconstructed provided there is no material expansion of the use or structure within the buffer or increase of the nonconformity with this chapter. For the purposes of this subsection, a material expansion that results in an increase in nonconformity shall be determined to exist when:

(i) There is an increase in the footprint of the nonconforming use or structure, as defined by this chapter; or

(ii) For residential development, there is an increase in the number of bedrooms, bathrooms or kitchens, such that would have the effect of increasing the quantity of effluent generated by the use of the nonconforming structure.

(b) For wetland or aquatic habitat conservation area buffers, a habitat management plan pursuant to Part Eight of this chapter will be required if such activity results in material disturbance to the critical area buffer outside the original footprint.

(c) For landslide hazard buffers (includes channel meander hazards), a geotechnical report and habitat management plan in accordance with Part Eight of this chapter are required.

(d) Activities associated with pre-existing uses undertaken on previously disturbed areas (non-native soils or slopes which are the result of previous excavation, filling or grading) are permitted; provided, the activities do not decrease slope stability, do not significantly alter surface or ground water flow, do not increase the size of the disturbed areas, and do not result in a permanent decrease in vegetated area.

(e) Any expansion or minor change to a preexisting use or structure which does not conform to the standards of this chapter and is allowed or conditionally allowed pursuant to this subsection shall require the issuance of a certificate of compliance prior to any such activity.

(2) Repair, reconstruction or minor improvements within landslide hazards or floodways. Repair, replacement or minor improvements of a pre-existing use or structure within a landslide hazard (includes channel meander hazards) or floodway shall comply with the following:

(a) Consistent with RCW [86.16.041](#) (2)(a), Floodplain Management, which states: "restriction of land uses within designated floodways including the prohibition of construction or reconstruction of residential structures except for: 1) repairs, reconstruction or improvements to a structure which do not increase the ground floor area; and 2) repairs, reconstruction or

improvements to a structure the cost of which does not exceed fifty (50) percent of the market value of the structure either: a) before the repair, reconstruction, or repair is started, or b) if the structure has been damaged and is being restored before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the fifty-percent determination.”

(b) Pre-existing structures for human occupation located within a landslide hazard (includes meander hazards) may not be reconstructed or replaced without meeting the provisions of this chapter unless a variance or reasonable use exception approval is granted by the applicable review authority pursuant to this chapter.