

ORDINANCE NUMBER 17 - 02
AMENDMENTS TO THE MASON COUNTY RESOURCE ORDINANCE

AN ORDINANCE amending the Mason County Resource Ordinance, Ordinance 77-93, Section 17.01.110 Fish and Wildlife Habitat Conservation Areas, stating regulations which apply to the fish and wildlife habitat conservation areas of Mason County, under the authority of Chapters 36.70 and 36.70A RCW.

WHEREAS, the Board of County Commissioners held a public hearing on February 26, 2002, to consider the recommendations of the Planning Commission, the Mason County Department of Community Development, and citizens on the proposed amendments;

WHEREAS, the Mason County Planning Commission formulated its recommendations after a public hearing on December 3, 2001;

WHEREAS, these hearings were duly advertised public hearings;

WHEREAS, these amendments are intended to comply with the Orders of the Western Washington Growth Management Hearings Board, Case No. 95-02-0073;

WHEREAS, the Mason County Board of County Commissioners has approved findings of fact to support its decision as ATTACHMENT A;

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of County Commissioners of Mason County hereby approves and ADOPTS the amendments to the Mason County Resource Ordinance, as amended, as described by ATTACHMENT B.

EFFECTIVE JUNE 1, 2002 ^{26th}
DATED this 26th day of February, 2002.

Board of County Commissioners
Mason County, Washington

Wesley E. Johnson
Wesley E. Johnson, Chair

Herb Baze
Herb Baze, Commissioner

Robert Holter
Robert Holter, Commissioner

ATTEST:

Rebecca S. Rogers
Clerk of the Board

APPROVED AS TO FORM:

Dan Niecek
Deputy Prosecuting Attorney

17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

A. PURPOSE.

Fish and wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated populations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean intergovernmental cooperation and coordination is critically important in a region. In some cases, it is sufficient to assure that a species will usually be found in certain regions across the state. The provisions for the protection of habitat contained in this section can not succeed in their purpose of supporting viable populations of fish and wildlife species unless other agencies and the public also act to protect the species. In the case of anadromous fish, the Statewide Salmon Recovery Strategy identifies that it will take a balanced approach to addressing the factors of decline that are within human control, including harvest, hatchery, habitat, and hydropower. The underlying assumption within this section is that impacts to anadromous fish or their habitat or to fish and wildlife conservation areas shall be avoided or mitigated as detailed in an approved Habitat Management Plan as described in Section 17.01.110.J. The intent of this Section is to:

1. Protect critical habitat features to support genetically viable populations of fish and wildlife species and allow for commercial and non-commercial uses;
2. Protect the biological, physical, and chemical components of water quality for the benefit of aquatic and terrestrial resources, as well as human consumptive uses;
3. Ensure that natural stream and marine shoreline functions such as flow patterns, production of sediment and large woody debris are maintained with minimal interference or impact to private property;
4. Protect habitat for federal or state listed endangered, threatened or sensitive fish and wildlife.
5. Encourage non-regulatory methods of habitat retention whenever practical, through education, and the Open Space Tax Program.
6. To supplement the Shorelines Master Plan for Mason County to preserve and protect critical fish and wildlife habitat pursuant to (WAC 365-190-080(5)). It is the intent that this ordinance will compliment and supplement the Shorelines Master Plan.
7. To implement the Mason County Comprehensive Plan and to achieve these purposes consistent with the Comprehensive Plan.

B. FISH AND WILDLIFE HABITAT CONSERVATION AREA CATEGORIES.

Fish and wildlife habitat conservation areas include both aquatic and terrestrial areas within Mason County. The approximate location and extent of critical fish and wildlife habitat areas are displayed in the Washington Department of Fish & Wildlife's (WDFW) Priority Habitat and Species (PHS) Program database. Mason County will also use other available information for these critical fish and wildlife habitat areas, including tribal and federal databases and local knowledge. The following categories shall be used in classifying critical areas to be regulated under this ordinance:

1. Commercial and recreational shellfish areas.
2. Kelp and eelgrass beds; herring, sand lance, and smelt spawning areas.
3. Naturally occurring lakes and ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat.
4. Streams.
5. Saltwater Shorelines, and Lakes 20 Acres and Greater in Surface Area.
6. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
7. State Department of Natural Resources natural area preserves and natural resource conservation areas.
8. Areas with which Federal or State endangered, threatened and sensitive species of fish and wildlife have a primary association. Those species known to be found in Mason County are listed in Table 1. Protection of species habitats is determined by the State or Federal listing, and their actual presence near the site subject to review. Other listed and protected species may be found in Mason County, which are not in Table 1.
9. Areas that contain habitats and species of local importance as listed in Table 1 below. Species of local importance may include, but are not limited to, State Candidate and Monitor species.

Table 1. Species of Importance that may occur in Mason County			
Species	Scientific Name	State Status	Federal Status
<i>Fish</i>			
Bull Trout	<i>Salvelinus confluentis</i>	Candidate	Threatened
Puget Sound Chinook	<i>Onchorynchus tshawytscha</i>	Candidate	Threatened
Hood Canal Summer Chum	<i>Onchorynchus keta</i>	Candidate	Threatened
Dolly Varden	<i>Salvelinus malma</i>	none	none
<i>Amphibians</i>			
Western Pond Turtle	<i>Clemmys marmorata</i>	Endangered	Species of Concern
Cascade Frog	<i>Rana cascadae</i>	none	Species of Concern
Van Dyke's salamander	<i>Plethodon vandykei</i>	Species of Concern	Species of Concern
Tailed Frog	<i>Ascaphus truei</i>	Monitor	Species of Concern
Olympic Torrent salamander	<i>Ryacotriton olympicus</i>	Monitor	none
<i>Mollusks</i>			
Newcomb's littorine snail	<i>Algamorda newcombiana</i>	Species of Concern	Species of Concern
<i>Birds</i>			
Marbled Murrelet	<i>Brachyramphus marmoratus</i>	Threatened	Threatened
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Threatened	Threatened

Northern Spotted Owl	<i>Stridex occidentalis</i>	Endangered	Threatened
Northern Goshawk	<i>Accipiter gentilis</i>	Candidate	Species of Concern
Peregrine Falcon	<i>Falco peregrinus</i>	Endangered	Species of Concern
Pileated Woodpecker	<i>Drycopus pileatus</i>	Candidate	none
Common Loon	<i>Gavia immer</i>	Sensitive	none
Harlequin Duck	<i>Histrionicus histrionicus</i>	none	Species of Concern
Brandt's Cormorant	<i>Phalacrocorax penicillatus</i>	Candidate	none
Olive-sided Flycatcher	<i>Contopus boreaus</i>	none	Species of Concern
Golden Eagle	<i>Aquila chrysaetos</i>	Candidate	none
Great Blue Heron	<i>Ardea herodias</i>	Monitor	none
Merlin	<i>Falco columbarius</i>	Candidate	none
Purple Martin	<i>Progne subis</i>	Candidate	none
Western Bluebird	<i>Sialia mexicana</i>	Monitor	none
Vaux's Swift	<i>Chateura vauxi</i>	Candidate	none
Mammals			
Gray Wolf	<i>Canis lupis</i>	Endangered	Endangered
Pacific Fisher	<i>Martes pennanti</i>	Endangered	Species of Concern
Townsend's big-eared bat	<i>Plecotus townsendii</i>	Candidate	Species of Concern
Shelton pocket gopher	<i>Thomomys</i>	Candidate	none
Merriam's Shrew	<i>Sorex merriami</i>	Candidate	none
Roosevelt elk	<i>Cervus elaphus roosevelti</i>	none	none
Pygmy Shrew	<i>Sorex hoyi</i>	Monitor	none

Table 2. Priority Species not Federally or State listed and not governed by this ordinance.

Species	Scientific Name	State Status	Federal Status
Blue Grouse	<i>Dendragapus obscurus</i>	none	none
Band-tailed Pigeon	<i>Colmba fasciata</i>	none	none
Wood Duck	<i>Aix sponsa</i>	none	none
Hooded Merganser	<i>Lophodytes cucullatus</i>	none	none
Mountain Quail	<i>Oreortyx pictus</i>	none	none

C. DESIGNATION

The areas classified in Section B above as Fish and Wildlife Habitat Conservation Areas (FWHCA) are hereby designated under RCW 36.70A.060 and RCW 36.70A.170, as critical areas requiring proper land management to protect their value and functions.

D. ESTABLISHMENT OF BUFFERS ON FISH & WILDLIFE HABITAT CONSERVATION AREAS

1. Fish and Wildlife Habitat Conservation Areas shall have Buffers and Building Setbacks established. The standard buffer and setback requirements are shown in Table 3.
 - a. Buffers or setbacks shall be maintained along the perimeter of Fish and Wildlife Habitat Conservation Areas Buffer distances associated with streams shall be measured horizontally from the ordinary high water mark (OHWM) or channel migration zone (CMZ), whichever is greater. All other buffer distances shall be measured horizontally from the established FWHCA perimeter.
 - b. Buffers shall be retained in their natural condition, except as provided elsewhere in this ordinance.
 - c. Building Setback Lines: A building setback line of fifteen (15) feet is required from the edge of any buffer area.

2. The following are special provisions for buffers and setbacks on lots created prior to December 5, 1996, and which are located on a Type 1 water that is a saltwater or is a freshwater lake. As stated in the Table 3, there shall be a standard 75 foot buffer with a 15 foot building setback extending from the edge of the buffer, for a total of 90 feet as measured from the ordinary high water mark (OHWM). Provided, however, that in the following circumstances, these special provisions apply instead of the standard buffer and setback requirement.
 - a. *Special provision for view protection on subject lots.*
Applications for single-family residential construction and meeting the following conditions shall have buffers and setbacks as described below:
 - 1) Where existing residences are on both sides of and within 150 feet of the lot line of the subject lot, and no more than 200 feet from the shoreline OHWM, the setback on the subject lot is determined by an imaginary common line drawn across the subject lot which connects the shore-side roof lines of the first adjacent existing residences. (See Figure 1). The common line set back may be more or less than 90 feet from the OHWM, provided, however, that:
 - (a) the buffer shall not be less than 20 feet in width from the OHWM and a minimum setback from the edge of the buffer is 15 feet; and
 - (b) there shall be a maximum buffer of 75 feet from the OHWM with the balance of the setback established by the common line to be a building setback area.
 - 2) Where an existing residence is on one side of and within 150 feet of the lot line of the subject lot, and no more than 200 feet from the shoreline OHWM, the setback on the subject lot is determined by an imaginary common line drawn from the shore-side roof line of the existing residence and across the subject lot to a point which is 90 feet from the OHWM along the far lot line of the subject lot. (See Figure 2). The common line set back may be more or less than 90 feet from the OHWM, provided, however, that:
 - (a) the buffer shall not be less than 20 feet in width from the OHWM and a minimum setback from the edge of the buffer is 15 feet; and
 - (b) there shall be a maximum buffer of 75 feet from the OHWM with the balance of the setback established by the common line to be a building setback area.

Table 3. Fish & Wildlife Habitat Conservation Area Development Standards.

Habitat Type	Buffer	Building Setback from Buffer
Type 1 Stream	150 feet	15 feet
Type 2 Stream	150 feet	15 feet
Type 3 Stream	150 feet	15 feet
Type 4 Stream	100 feet	15 feet
Type 5 Stream	75 feet	15 feet
Type 1 Saltwater and Lake* excluding Conservancy Shorelines	75 feet	15 feet
Conservancy Shorelines**, Type 1 Saltwater and Lake	100 feet	15 feet

*Type 1 lakes are lakes over 20 acres. All saltwater shorelines are Type 1.

**Conservancy Shorelines are those shorelines designated as Conservancy Shoreline Environment in the Mason County Shoreline Master Program.

- 3) As used in this section, a “residence” refers to the principal dwelling/residential structure and does not include outbuildings or other structures.
- 4) When applying 1) above, if the shoreline has a high degree of curvature, the Administrator may use the average set back from OHWM of the two existing residences rather than the imaginary line between the rooflines in order to establish the common line setback. When applying 2) above, if the shoreline has a high degree of curvature, the Administrator may use the average of the set back from OHWM of the existing residence and the 90 foot setback, rather than the imaginary line between the roofline and the 90 foot setback, in order to establish the common line setback.

b. *Special provision for water-dependent uses on existing lots.*

Applications for development defined as water-dependent uses shall provide the standard 75 foot buffer along as much of the shoreline as possible while making the minimum necessary adjustments to be buffer to provide for the water-dependent use, as determined by the Director. Such development shall meet the requirements of other applicable regulations, including other Resource Ordinance sections and the Mason County Shoreline Master Program.

3. *Provision for Decreasing Buffer.*

For major new development, Mason County may decrease the buffer after consultation with the Washington State Department of Fish and Wildlife and the Skokomish Tribe, the Quinault Tribe and/or the Squaxin Island Tribe, after review and approval of a Habitat Management Plan, and after a public hearing.

4. *Provision for Increasing Buffer.*

Mason County may increase the buffer width on a case-by-case basis, after a public hearing, as provided in subsection 17.01.120.L., when a larger buffer is necessary to

protect the structure, function and value of Fish & Wildlife Habitat Conservation Areas. The buffer shall be increased or other protections shall be provided in order to prevent a significant adverse environmental impact by a proposed project on those functions and values. This determination shall be supported by appropriate documentation to be obtained in consultation with the state of Washington and the Skokomish Tribe, Quinalt Tribe and/or the Squaxin Island Tribe. Such determination shall be attached as a permit condition and shall demonstrate that:

- a. A larger buffer is necessary to maintain viable populations or critical habitat of endangered, threatened, or sensitive species; or
- b. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts to the FWHCA; or
- c. If the FWHCA contains variations in sensitivity, increasing the vegetation area widths will only be done as necessary to preserve the structure, function and value of the FWHCA.
- d. If the increase in buffer is based on the upland area feeding substantial material to the net-shore drift system, as identified in the Mason County Shoreline Inventory Report, June 12, 1995, that the larger buffer is necessary in maintenance of that system and the functions and values of the FWHCA. The increase shall approximate the bluff erosion distance having occurred over the past 50 years, based on best available information.

E. STEWARDSHIP OPTIONS AND INCENTIVES

The purpose of this subsection is to encourage property owners to protect critical areas and their buffers and to reduce the burden on property owners from the application of the Resource Ordinance regulations. Options given below may be used individually, or they may be combined for greatest effect and benefit.

1. *Open Space Bonus:* Any property owner, except on land designated as Long-Term Commercial Forest Lands, Agricultural Resource Lands or Mineral Resource Lands, may apply for a performance subdivision as provided in Chapter 16.22, Mason County Code. Approval of such a subdivision provides for a development density bonus - that is, it allows more lots for development - in exchange for the protection of critical areas and meeting other design requirements.
2. *Open Space Tax Assessment:* Any property owner may apply for current use property tax assessment for lands which are fish and wildlife habitat conservation areas or their buffers pursuant to RCW 84.34.
 - a. The land proposed for current use tax assessment shall be in a separate tract or a conservation easement.
 - b. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property. A conservation easement is a legal agreement a property owner makes to restrict the type and amount of development that may occur on a parcel. Each easement is tailored to the particular property and to the interest of the individual owner. The property owner grants an easement to an appropriate governmental agency or non-profit land trust. It provides significant property and federal income tax benefits to the property owner. The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the county.

3. *Density Credit:* On lands containing FWHCAs or their buffers, the county shall allow a transfer of density for residential uses from the portion of the property containing the critical areas or buffers to that portion of the property that does not contain critical areas or buffers - that is, the property could be developed with the same number of lots it would have if critical areas were not present - provided that such transfer does not create any adverse impacts to the critical area that can not be adequately mitigated and provided that all other development regulations can be met.
4. *Tax Re-assessment:* The owner of any property that has been affected by a permit decision by the county may request an immediate re-assessment by the Mason County Assessors Office, as provided by RCW Chapter 84.
5. *Conservation Futures:* If approved by a vote of the people of Mason County, Mason County shall use conservation futures revenue to compensate affected property owners for the impact of protecting fish and wildlife through the purchase of conservation easements on impacted land or the impacted land.
6. *Education:* The county encourages proper stewardship on land to provide benefits to fish and wildlife. The county shall provide educational information to the public through its sponsorship of the Washington State Cooperative Extension Service, the Mason Conservation District, or through the provision of informational materials in its offices.
7. *Best Management Practices:* Where not otherwise required, Mason County encourages the use of best management practices that are part of site preparation, development construction, and use activities after construction: erosion and sediment control measures; maintain existing vegetation and minimize site clearing; use native plants in landscaping rather than lawn areas; control runoff to small ponds and buffer vegetation; and minimize use of fertilizers and chemicals in property maintenance (pest, weed, and moss control; sealants, oils, and fuels).

F. ACTIVITIES WHICH DO NOT REQUIRE A MASON ENVIRONMENTAL PERMIT

The following uses shall be allowed, within a FWHCA or its buffer to the extent that they are not prohibited by any other applicable law or ordinance, provided they are conducted so as to minimize any impact on the values and functions of the FWHCA, and provided they are consistent with any county approved Resource Ordinance Special Study (such as a Habitat Management Plan or Geotechnical Report) or any state or Federally approved management plan for an endangered, threatened, or sensitive species.

1. The remodel, repair, or change of use of an existing building within its existing footprint, plus or minus ten percent and provided that such expansion does not increase any intrusion into the aquatic management area or buffer. Reconstruction of structures destroyed by fire or other means, provided that completed application for reconstruction occurs within the previous structural footprint and within two years of the destruction. This provision is intended to apply only to that portion of a building which lies within a FWHCA or its buffer.
2. The removal from buffer areas of noxious weeds designated in Chapter 17.10 RCW.
3. Ongoing and existing activities (such a lawn and garden maintenance).
4. Buffer alterations for view corridors are allowed with emphasis placed on limbing and with selective timber removal minimized to the extent possible. Proposed alterations shall be the minimum to afford views within the buffer and shall minimize shrub vegetation removal and ground disturbance while maintaining the large mature trees. Under this provision, no more than 10

percent of trees in the buffer less than six inches in diameter at breast height may be removed from the buffer without specific authorization from Mason County, which may allow removal up to 20 percent. View corridor improvement actions which include the removal of trees larger than six inches in diameter at breast height will require Mason County approval and replacement with native tree and/or shrub plant species are limited to 15 percent of such trees in the buffer.

5. The removal of a danger tree from a buffer, provided it is documented by a forester, who is a documented member in good standing of a national forestry society. Removal of danger trees shall be mitigated by planting a total of six (6) new trees seedlings each a minimum three years old and each of the same species as the removed tree or native species trees. If the replacement is judged to be unnecessary, Mason County may require the applicant to place the downed danger tree within the buffer as habitat.
6. The enhancement of a buffer by planting indigenous vegetation.
7. The construction of trails which shall be unpaved when located in the buffer areas and elevated when located in wetlands, which are not intended for motorized use, and which are no wider than three (3) feet, unless additional width is necessary for safety along a precipice, steep hillside, or other hazardous area.
8. Harvesting of Wild Crops: Harvesting wild crops which do not significantly affect the viability of the wild crop, the function of the Fish and Wildlife Habitat or regulated buffer (does not include tilling of soil or alteration of the Fish and Wildlife Habitat Conservation Area).
9. Any of the General Exemptions authorized by Section 17.01.130.

G. DEVELOPMENT AND ACTIVITIES REQUIRING A MASON ENVIRONMENTAL PERMIT IN FISH & WILDLIFE HABITAT CONSERVATION AREAS OR THEIR BUFFERS

A Mason Environmental Permit shall be obtained from the County, using the administrative review process in this Chapter, before undertaking the following activities in FWHCAs or their buffers. When a major new development is proposed within 1/4 mile of a listed species point location (den or nest site), as identified through the WDFW PHS data base, tribal and other local fish and wildlife databases or knowledge, a preliminary review by a qualified fish and wildlife professional shall be provided to the county which shall determine if a FWHCA or its buffer is within the area of the development.

1. A Habitat Management Plan (HMP) shall be prepared for these activities:
 - a. The removal; excavation, grading, dumping, discharging or filling of any material unless part of a project which has been permitted pursuant to this section or for which no permit is required.
 - b. The destruction or alteration of FWHCA's or their buffers through clearing, harvesting, shading, intentional burning, vegetation removal (terrestrial, freshwater, or marine), or planting of vegetation that would alter the character of the FWHCA or buffer, unless part of a project which has been permitted pursuant to this section or for which no permit is required.
 - c. *New Residential Construction and Major New Development:* New residential construction and major new development is not permitted within FWHCA or its buffer, except for the activities listed in this subsection G, or as approved through a variance or reasonable use exception as provided in subsection K. The design and siting of these projects should not adversely impact water quality of receiving waters such as wetlands, streams, rivers, Hood

Canal or Puget Sound. In addition, project design should meet or exceed any storm water design requirements to avoid any risk of decertification of shellfish beds or impacts to baitfish (herring, smelt, sand lance, candlefish ,etc.) spawning areas.

- d. *Stream Relocation:* Stream relocations are discouraged except for the purpose of fisheries restoration and require a Habitat Management Plan. Stream relocation shall only be permitted when adhering to the following minimum performance standards and when consistent with Washington State Department of Fish and Wildlife Hydraulic Project Approval.
 - i. The channel, bank and buffer areas shall be replanted with native vegetation that replicates a natural, undisturbed riparian condition; and,
 - ii. For those shorelands and waters designated as Frequently Flooded Areas pursuant to Section 17.01.090, a professional engineer licensed in the State of Washington shall provide information demonstrating that the equivalent base flood storage volume and function will be maintained.
 - iii. Relocated stream channels shall be designed to meet or exceed the functions and values of the stream to be relocated as determined by the monitoring in the Habitat Management Plan.

- e. *Bank Stabilization:* A stream channel and bank, bluff, and shoreline may be stabilized when naturally occurring earth movement threatens existing legal structures (structure is defined for this purpose as those requiring a Building Permit pursuant to the Uniform Building Code), public improvements, unique natural resources, public health, safety or welfare, or the only feasible access to property, and, in the case of streams, when such stabilization results in maintenance of fish habitat, flood control and improved water quality. Bluff, bank and shoreline stabilization shall follow the standards of the Mason County Shoreline Master Program, Landslide Hazard Areas, and any floodplain management plan adopted by the Board of Commissioners.

Mason County may require that bank stabilization be designed by a professional engineer licensed in the State of Washington with demonstrated expertise in hydraulic actions of shorelines. For bank stabilization projects within FWHCAs, emphasis shall be placed on bioengineering solutions (vegetation versus hard surfaces) unless proved by the applicant to be infeasible. Bank stabilization projects may also require a Hydraulic Project Approval from the Washington Department of Fish and Wildlife and will be determined after consultation with WDFW.

- f. *Gravel Mining:* Gravel mining is discouraged within FWHCAs or their buffers, and it shall not be permitted if it causes significant adverse environmental impact, but it may be allowed following the review and approval of a Habitat Management Plan, including a detailed mining and reclamation plan (required by the Washington Department of Natural Resources).

- g. *Conservation:* Any conservation, preservation, or enhancement projects to protect functions and values of the critical area system, including activities and mitigation allowed pursuant to the mitigation priorities identified in Section I.

- h. *Outdoor Recreation, Education and Trails:* Activities and improvements which do not significantly affect the function of the Fish and Wildlife habitat or regulated buffer (including viewing structures, outdoor scientific or interpretive facilities, trails, hunting blinds, etc.) may be permitted in FWHCA or their buffers.
 - i. Trails and other facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or other such previously disturbed areas;

- ii. Trails and other facilities shall be planned to minimize removal of trees, shrubs, snags and important wildlife habitat;
 - iii. Viewing platforms, interpretive centers, benches and access to them, shall be designed and located to minimize of impacts to wildlife, fish, or their habitat and/or critical characteristics of the affected conservation area.
 - iv. Trails, in general, shall be set back from streams so that there will be minimal impact to the stream from trail use or maintenance. Trails shall be constructed with pervious surfaces when feasible and trails within FWHCAs are not intended to be used by motorized vehicles.
- I. *Road/Street Expansion & Construction:* Any private or public road or street expansion or construction which is allowed in a Fish and Wildlife Habitat Conservation Area or its buffer shall comply with the following minimum development standards:
- I. No other reasonable or practicable alternative exists and the proposed road or street serves multiple properties whenever possible;
 - ii. Public and private roads should provide for other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc.; and,
 - iii. The road or street construction is the minimum necessary, as required by the Department of Public Works and Fire Marshall, and shall comply with the Department of Public Works' guidelines and Fire Code to provide public safety and mitigated storm water impacts. Minimum necessary provisions may include projected level of service requirements.
 - iv. Construction time limits shall be determined in consultation with the Washington Department of Fish and Wildlife in order to ensure species and habitat protection.
2. A Habitat Management Plan (HMP) will not be required the following activities which comply with the development standards below, except as specified:
- a. *Stream Crossings:* All stream crossings should be discouraged and alternatives should be explored. Any private or public road expansion or construction which is proposed and must cross streams classified within this Ordinance, shall comply with the following minimum development standards:
 - I. Bridges or arch/bottomless culverts shall be required for all Type 1, 2 and 3 streams (which have anadromous fish habitat). Fish passage shall be provided, if necessary to address man-made obstructions on site. Other alternatives may be allowed upon a showing that, for the site under review, the alternatives would be less disruptive to the habitat or that the necessary building foundations were not feasible. Submittal of a Habitat Management Plan which demonstrates that the alternatives would not result in significant impacts to the Fish and Wildlife Habitat Conservation Area (FWHCA) may be required if the information necessary to determine if the permit requirements contained in subsection I. 5. have been met. The plan must demonstrate that salmon habitat will be replaced at a minimum 1:1 ratio.
 - ii. Crossings shall not occur in salmonid spawning areas unless no other reasonable crossing site exists. For new development proposals, if existing crossings are determined to adversely impact salmon spawning or passage areas, new or upgraded crossings shall be located as determined necessary through coordination with the Washington State Department of Fish and Wildlife and the Skokomish Tribe, the Quinault Tribe and/or the Squaxin Island Tribe;
 - iii. Bridge piers or abutments shall not be placed either within the floodway or between the ordinary, high water marks unless no other reasonable alternative

- placement exists;
 - iv. All stream crossings shall be required to pass 100 year projected flood flows, even in non-fish bearing Type 4 and 5 streams. In addition, crossings for Type 1, 2, or 3 should allow for downstream transport of large woody debris;
 - v. Crossings shall serve multiple properties whenever possible.
 - vi. Where there is no reasonable alternative to providing a culvert, the culvert shall be the minimum length necessary to accommodate the permitted activity.
- b. *Land Divisions:* In order to implement the purpose of this section and the County Comprehensive Plan, to accommodate design innovation, creativity, and flexibility, and to achieve a level of environmental protection that would not be possible by typical lot-by-lot development, the use of the Performance Subdivision process (Title 16 Mason County Subdivision Ordinance) is strongly encouraged. Divisions of land (Subdivisions, Short Subdivisions, Large Lot Subdivisions) shall comply with the following development standards:
- i. In order to avoid the creation of non-conforming lots, each new lot shall contain at least one building site that meets the requirements of this Ordinance, including buffer requirements for habitat conservation areas. This site must also have access and a sewage disposal system location that are suitable for development and do not adversely impact the FWHCA.
 - ii. After preliminary approval and prior to final land division approval, the common boundary between a required buffer and the adjacent property shall be identified using appropriate signs. In lieu of signs, alternative methods of buffer identification may be approved when such methods (fences or enhanced native planting) are determined by Mason County to provide adequate identification to the buffer and the FWHCA.
 - iii. Buffer areas shall be dedicated as permanent open space tracts, functioning as FWHCA buffers.
 - iv. If development is proposed within a FWHCA or its buffer, a HMP is required.
- c. *Agricultural Restrictions:* In all development proposals which would permit introduction of agriculture adjacent to FWHCA, damage to the area shall be minimized by the following methods:
- i. Implementation of the farm conservation plan agreed upon by the Mason Conservation District and the applicant, to protect the water quality of the FWHCA. The conversion of wood lots to other agricultural uses will require such a farm plan. (The farm conservation plan is not in lieu of a HMP.); and/or,
 - ii. Fencing located not closer than the outer buffer edge.
 - iii. If development is proposed within a FWHCA or its buffer, a HMP is required.
- A Mason Environmental Permit is not required for those agricultural activities defined in 17.01.070 (Wetlands) which could also occur in a FWHCA.
- d. *Utilities:* Placement of utilities within designated Fish and Wildlife Habitat Conservation Areas may be allowed pursuant to the following standards:
- i. Construction of utilities may be permitted in FWHCA's or their buffers, only when no practicable or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below. Utilities are encouraged to follow existing or permitted roads where possible.

- ii. Construction of wells, sewer lines, water lines, or on-site sewage systems are not permitted in FWHCA's but may be permitted in a buffer area when the applicant demonstrates it is necessary to meet State and/or local health code requirements; there are no other practicable alternatives available; and construction meets the requirement of this section. Joint use of the sewer or water utility corridor by other utilities may be allowed. Encroachment of more than 50 feet into the buffer will require a HMP.
 - iii. New Utility Corridors shall not be allowed in FWHCA's with known locations of federal or state listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidate or state monitor, except in those circumstances where an approved Habitat Management Plan is in place.
 - iv. Utility corridor construction and maintenance shall protect the environment of Fish and Wildlife Habitat Conservation Areas and their buffers.
 - (1) New utility corridors shall be aligned when possible to avoid cutting trees greater than 12 inches in diameter at breast height (four and one-half feet) measured on the uphill side.
 - (2) New utility corridors shall be revegetated with appropriate native vegetation at not less than pre-construction vegetation densities or greater, immediately upon completion of construction or as soon thereafter as possible due to seasonal growing constraints. The utility shall ensure that such vegetation survives for a three-year period;
 - v. Utility towers should be painted with brush, pad or roller and should not be sandblasted or spray painted, nor shall lead base paints be used.
- e. *Forest Practices, Class IV General* : Timber harvesting with associated development activity involving land conversions from Forest Use, or otherwise meeting the DNR definition as a Class IV General application, shall comply with the provisions of this Ordinance including the maintenance of buffers, where required. If harvest or development is proposed within a FWHCA or its buffer, a HMP is required.
- f. *Mobile Home or RV Parks*: new or expanded mobile home or RV parks shall comply with the following development standards:
- i. Lots or spaces and other improved areas shall be outside of FWHCA and its buffer. Roads, utilities, and trails may encroach on the buffer or FWHCA as provided elsewhere in this section. The project as a whole shall not adversely impact the FWHCA.
 - ii. The common boundary between a required buffer and the adjacent property shall be identified using signs or alternative methods determined Mason County to provide adequate identification to the buffer and the FWHCA.
 - iii. Buffer areas shall be designated as open space and preserved to the extent possible.
 - iv. If development is proposed within a FWHCA or its buffer, a HMP is required.
- g. *Marine Activities*: All activities in tidal/saltwater submerged lands shall avoid impacts to eelgrass and kelp beds to the maximum extent. If eel grass or kelp is known or suspected in the vicinity, then an aquatic vegetation survey is required to identify the location of eelgrass or kelp. Unavoidable impacts to these sensitive marine areas shall be addressed in a Habitat Management Plan that presents an acceptable mitigation program.
- h. *Chemical Application or Storage*: Chemical applications are not permitted within FWHCAs unless expressly approved as part of a farm plan, forest practices application or for the

control of invasive or noxious plant species. In cases where approved chemical applications occur as part of a forest practices application or farm plan, proper reporting procedures shall be followed. Chemical application consistent with state and Federal regulation does not require a Mason Environmental Permit, but it does need to comply with the standards included herein. Chemical storage shall not be permitted within a FWHCA or its buffer.

H. HABITATS AND SPECIES OF LOCAL IMPORTANCE -- LISTING & DELISTING IMPORTANT HABITATS & SPECIES

1. Locally significant species are those which are not state listed as threatened, endangered or sensitive, but which live in Mason County, and the species is special importance to the citizens of Mason County for cultural or historical reasons, or the county is a critically significant portion of their range. Mason County is a critically significant portion of the range of a species when any of the following conditions apply:
 - a. The species would be extirpated from the state of Washington if it is extirpated from Mason County; or
 - b. The species' population would be divided into non-viable populations if it is extirpated from Mason County, where the isolated populations are critical to the survival of the species; or
 - c. The species is listed as a state monitor or candidate species and Mason County is a significant portion of the range of the species and significant reduction or extirpation of the species from Mason County would result in changing the status of the species to that of state endangered, threatened, or sensitive.
2. Locally significant habitats are those habitats in which significant species live, or which is of special importance to the citizens of Mason County because they have been determined to contribute to the variety of habitats or diversity of species.
3. Regulations prepared to protect locally important habitat and species shall consider and, where possible, support the economic development of Mason County and the use of resource lands and resources industry, enhance the affordability of housing, and otherwise promote the achievement of other goals in the Mason County Comprehensive Plan.
4. The process for listing or delisting an important habitat or species in Mason County shall be an amendment to this section of the Interim Resource Ordinance. This action may be initiated by request of the State Department of Fish & Wildlife, the Skokomish Tribe, the Quinault Tribe and/or the Squaxin Island Tribe, County staff, or interested citizens. Any such request shall be in writing and shall include:
 - a. The common and scientific names of for species under consideration;
 - b. Habitat location on a map (scale 1:24,000);
 - c. The reasons for the request, including:
 - (1) declining or increasing population,
 - (2) sensitivity to habitat manipulation.
 - d. Habitat management recommendations, including potential uses and restrictions of the habitat areas, seasonally sensitive areas, and other guidelines necessary for the protection of the nominated species.
 - e. Other supporting documentation, including an analysis which weighs the non-environmental impacts of the proposal, addressing economics and land use, against the benefits of the proposed listing.
5. The written request and supporting data may be evaluated by a qualified wildlife biologist or equivalent professional selected by the County.
6. In addition to the above, the County shall consider the following factors when evaluating the request:

- a. The specificity and scientific validity of the information about the nominated species needs and behaviors;
- b. The sufficiency of habitat areas currently available to sustain the species over time; and
- c. The versatility of the proposed habitat area to sustain species other than the one being nominated for local species of importance designation.

I. APPLICATION REVIEW PROCESS

1. Upon the receipt of an application for development, the Director shall determine whether the requirements of this section apply. The Director may consult with affected Tribes or state agencies in determining that the subject property is shown to be documented habitat for federal or state listed endangered, threatened or sensitive species.
2. Boundaries: The procedures for formal determination of regulated Fish and Wildlife Habitat Conservation Area boundaries are as follows:
 - a. The FWHCA boundary for streams shall be the Ordinary High Water Mark (OHWM) or channel migration zone (CMZ).
 - b. The FWHCA boundary for marine shorelines and lakes greater than 20 acres shall be the OHWM.
 - c. The boundary of all other FWHCA's may be determined using published databases, resource agency personnel, consultation with the Skokomish Tribe, Quinault and/or the Squaxin Island Tribe, and/or by a qualified environmental professional based upon site specific assessment and species presence.
3. Permit information: When a Mason Environmental Permit is required under this section, it is the applicant's responsibility to provide all necessary and accurate data to the County for its review. This information will include a field delineation by a qualified professional (biologist, hydrologist, soil scientist, and/or other expert as circumstances warrant). Formal boundary determination is the responsibility of the County.
 - a. When sufficient information exists from the County's natural resource inventory or other sources, Mason County may waive the requirement of a field delineation, provided a qualified professional has reviewed and approved such information as reliable.
 - b. When requested by the applicant, or an affected party, the County may perform the data collection, at a fee, in lieu of direct action by the applicant.
 - c. Where Mason County performs a formal determination at the request of the applicant pursuant to subsection b above, it shall be considered a final determination unless contested by the applicant or other affected party.
 - d. Where the applicant has provided the information in support of a permit for a formal determination by the County of the Fish and Wildlife Habitat Conservation Area boundary, Mason County shall verify the accuracy of, and may render adjustments to, the boundary determination in compliance with the provisions of this ordinance.
4. When a Mason Environmental Permit is required, the permit shall be obtained from the County using the administrative review process in this chapter prior to undertaking regulated activities in a FWHCA or its buffer.
5. In addition to any other requirements, permits shall only be granted if:
 - a. The proposed activity avoids adverse impacts to regulated FWHCA, or takes affirmative and appropriate measures to compensate for impacts. Mitigation sequencing should follow the avoidance, reduction, and compensation analysis, in that order of preference, and
 - b. The proposed activity is consistent with an approved Habitat Management Plan, if such a plan is prepared; or

- c. The proposed activity is approved as a variance or reasonable use exception under this chapter, if applicable.
6. FWHCA permits shall not be effective and no activity thereunder shall be allowed during the time provided to file and process a permit appeal.

J. HABITAT MANAGEMENT PLAN (HMP) REQUIREMENTS

The following describes the requirements of a Habitat Management Plan as discussed in this ordinance.

A HMP shall consider measures to preserve and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of natural vegetation on the functions and values of the FWHCA.

This report shall identify how the impacts from the proposed use or activity will be avoided or mitigated through habitat mitigation which meets the purposes of this ordinance. The most recent publication of the *Management Recommendations for Washington's Priority Habitats and Species*, as now or hereafter amended, and consultation with a habitat biologist from the Washington State Department of Fish and Wildlife and with the Skokomish Tribe, the Quinault Tribe and/or the Squaxin Island Tribe and shall be the basis for the report. In the case of bald eagles, an approved Bald Eagle Management Plan by the Washington State Department of Fish and Wildlife meets the requirements for a HMP.

Prior to submittal to the County, the Habitat Management Plan shall be reviewed and approved for adequacy by a qualified fish and wildlife professional. It shall contain but not be limited to the following information:

1. A map(s) prepared at an easily readable scale, showing:
 - a. The location of the proposed site;
 - b. The relationship of the site to surrounding topographic and built features;
 - c. The nature and density of the proposed use or activity;
 - d. Proposed building locations and sizes;
 - e. A legend which includes:
 - (1) A complete and accurate legal description and total acreage of the parcel;
 - (2) Title, scale, date, and north arrow;
 - (3) Certification by a qualified biologist.
 - f. Existing structures and landscape features including the name and location of all water bodies.
 - g. Location of listed species and their critical habitat areas.
2. A report which contains:
 - a. A description of the nature, density and intensity of the proposed use or activity in sufficient detail to allow analysis of such land use change upon identified wildlife habitat;
 - b. An analysis of the effect of the proposed use or activity upon fish and wildlife species and their habitats listed in this ordinance;
 - c. A plan which explains how the applicant will avoid, minimize or mitigate adverse impacts to fish and/or wildlife habitats created by the proposed use or activity. This explanation must address the management goals, policies and recommendations presented in this ordinance. Monitoring of mitigation shall be required when appropriate or necessary to ensure effectiveness. Mitigation measures within the plan may include, but are not limited to:
 - (1) Establishment of buffer areas;
 - (2) Preservation of critically important plants and trees;
 - (3) Limitation of access to habitat area;
 - (4) Seasonal restriction of construction activities;

- (5) Clustering of development and preservation of open space;
- (6) Sign marking habitats or habitat buffer areas;
- (7) Title notice or plat dedication warning statements;
- (8) Conservation easements.

3. Review comments by a habitat biologist from the Washington State Department of Fish and Wildlife (WDFW) and the Skokomish Tribe, the Quinault Tribe and/or the Squaxin Island Tribe shall be included in the HMP when available. If the HMP recommends mitigation involving federally listed threatened or endangered species, migratory waterfowl or wetlands, the U.S. Fish and Wildlife Service shall receive a copy of the draft HMP and their review comments shall be included in the final report.

This is provided that the Washington State Department of Fish and Wildlife, the Skokomish Tribe, the Quinault Tribe and/or the Squaxin Island Tribe and, if required, the U.S. Fish and Wildlife Service respond in writing to Mason County with review comments or a request for additional information within 28 days from the date of issuance of a draft habitat management plan. If review comments or a request for additional information is not received in the prescribed time frame, the tribal, state and/or federal review comments on the habitat management plan shall not be required for completion of the HMP. Mason County shall have the authority to approve Habitat Management Plans or require additional information.

K. RELIEF FROM THE REQUIREMENTS IN THIS SECTION

Specific relief from the requirements of this section may be obtained on a case-by-case basis by applying for a variance (Section 17.01.150) or a reasonable use exception (Section 17.01.120).

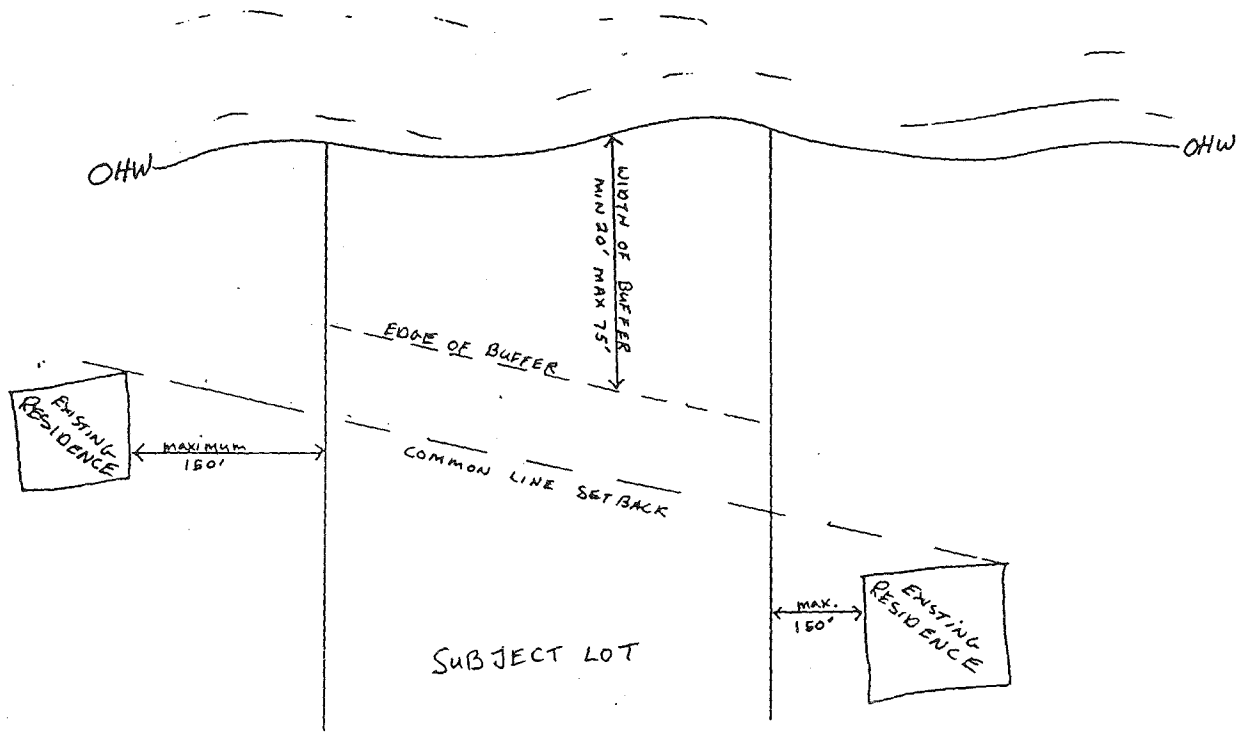


FIGURE 1

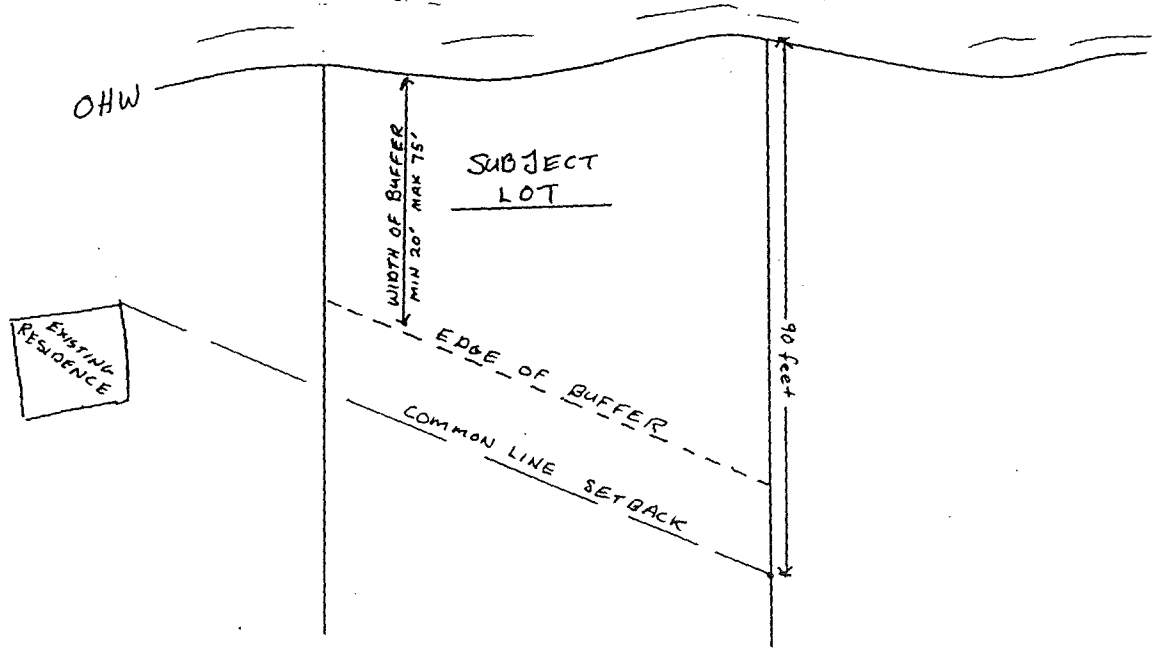


FIGURE 2

**Mason County Board of Commissioners
February 26, 2002**

FINDINGS OF FACT

1. PROPOSED ACTION

Under consideration is a proposal to amend the Mason County Resource Ordinance Section 17.01.110 Fish and Wildlife Habitat Conservation Areas intended to designate and provide development standards for fish and wildlife habitat conservation areas in Mason County. These changes are proposed to update the county regulations and to address the concerns of the Western Washington Growth Management Hearings Board in case #95-2-0073 addressed in their Findings and Order, dated December 1, 2000 and March 14, 2001.

2. PUBLIC PARTICIPATION

Mason County Department of Community Development held public workshops with the Mason County Planning Commission and Shoreline Advisory Board on proposed Fish and Wildlife Habitat Conservation Areas (FWHCA) standards during April to June and November 2001. A Mason County Planning Commission public hearing was held on December 3, 2001 and public testimony was received. A Mason County Board of Commissioners public hearing was held on December 11, 2001 and January 15, 2002 to receive additional comments. In addition, public participation was provided through the SEPA review process to agencies and interested parties in June 2001, other telephone public comment by the property owners, and public testimony at the hearings.

3. ENVIRONMENTAL REVIEW

A determination of non-significance (DNS) was issued by Mason County on June 12, 2001; the comments of the Department of Ecology received in response to this threshold determination and environmental checklist involved concerns about impacts to floodplains and stream resource values. After review of the comments received and consideration of the changes proposed since that issuance, it was determined by the Department of Community Development that no significant adverse impacts are expected from this action.

4. GROWTH MANAGEMENT HEARINGS BOARD COMPLIANCE - DISCUSSION

The Growth Management Hearings Board (GMHB), Case #95-2-0073, issued a Findings and Order on December 1, 2000 and March 14, 2001, finding Ordinance No. 89-00 invalid and ordering Mason County to address several issues which were found not compliant with the GMA. The discussion of these issues was presented in the staff reports for the public review before the Shoreline Advisory Board and Planning Commission and is summarized below:

- 1) *Bring into compliance the development standards for buffers in saltwater and lakes greater than 20 acres shorelines, to ranges indicated by best available science.*

To derive proposed development standards that were acceptable to state agencies and the

GMHB, Mason County sought interagency input from the Departments of Natural Resources, Fish and Wildlife, and Ecology, and the Office of Community Development. Development review changed from the designated FWHCA critical areas (i.e. fisheries-shellfish-protected plant habitat) to a "universal" vegetation buffer and setback standard to be applied to all shorelines of saltwater and large lake waterbodies in the county. This approach provides equal protection to all marine and large lake shorelines.

Washington Department of Fish and Wildlife (WDFW) comments on these FWHCA standards emphasized the importance of adequate tree and shrub vegetation areas along marine shorelines and the functions of structure, cover, and litter material contributed by such vegetation in the uplands adjacent to the nearshore habitat of marine and lake waters. Such native vegetation also stabilizes shoreline banks by protecting soils from direct wave and rainfall action and by strengthening the bank with a network of root mass in the soil profile. When text changes were made to specific ordinance subsections on buffer alterations for view corridors and on danger tree removal, WDFW agreed that the proposed 75 foot shoreline buffer and 15 foot building setback, totaling 90 feet, along with these buffer resource protections, would meet their concerns to maintain and provide significant protection for fish and wildlife habitat in marine waters and freshwater lake areas.

Both the WDFW and the Skokomish Tribe sought additional vegetation buffer and setback standards in areas of eroding banks and feeder bluffs. A criteria for increased vegetation buffer has been added to the standards to provide a buffer width that equals the 50 year period of erosion at the site location.

The proposed 100 foot vegetation buffer for type 1 shorelines designated Conservancy Shoreline Environment by the Mason County Shoreline Master Program was sought by the Skokomish Tribe in order to provide further protection of these waterbody areas.

- 2) *Bring into compliance the buffer reduction review process by determining administrative guidelines of review and by including a public hearing.*

Following the recommendation of the Planning Commission, the text of Resource Ordinance Sec. 17.01.110 has been revised to require a public hearing during the development review process. With this text, all proposals to reduce the standard buffer under this subsection will be evaluated through a public hearing review process.

- 3) *Bring into compliance the stated exemption of an environmental permit for existing and ongoing agriculture within FWHCA or its buffer.*

In evaluating this proposed ordinance change, Mason County staff determined that 140 parcels in the county have agricultural activities that are not covered by the Agricultural Resource Lands designation (which would qualify as General Exemption Sec. 17.01.130.B). This proposed exemption does not affect many properties, and the extent of agricultural practices on only a few would merit permitting by state agencies using best management practices. The text of Resource

Ordinance Sec. 17.01.110 has been revised to retain the August 29, 2000 ordinance text and to strike-out the reference to "existing and on-going agriculture" in subsection F.3 (*Activities Which Do Not Require a Mason Environmental Permit*).

5. GROWTH MANAGEMENT HEARINGS BOARD COMPLIANCE - FINDINGS

A. Mason County finds that these amendments and the provisions of this Section 17.01.110 of the Resource Ordinance are an important part of the implementation of GMA and county goals for environmental protection, specifically for fish and wildlife habitat conservation areas.

B. Mason County finds that the proposed fish and wildlife habitat conservation areas ordinance classifies these areas of the county, regulates proposed development in these habitat and buffer areas, and works together with other resource standards to provide adequate protection of the functions and values of those critical areas.

C. Mason County finds that the designation of fish and wildlife habitat conservation areas provides a level of protection to protect these critical areas that supports the goals of the Growth Management Act and incorporates Best Available Science in the development of the ordinance designations and regulations.

D. Mason County finds that all of the issues stated in the Growth Management Hearings Board Findings and Order of December 1, 2000 and March 14, 2001 have been addressed in the revisions made to the Mason County Resource Ordinance Sec. 17.01.110 Fish and Wildlife Habitat Conservation Areas.

6. CONCLUSIONS

The Board of County Commissioners finds that the ordinance revisions are consistent with the county-wide planning policies and finds that the proposed amendments balance the goals of the Mason County Comprehensive Plan and the goals of the Growth Management Act.

The Mason County Board of Commissioners hereby adopts the Findings of Fact for Ordinance No. - 02, the proposed changes to the Mason County Resource Ordinance Sec. 17.01.110.



Chair, Mason County Board of Commissioners

2-26-02
Date