

WHATCOM COUNTY COUNCIL AGENDA BILL

2016-276

NO.

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Cliff Strong		9/12/16		9/20/16	COTW
Division Head: Mark Personius	WAP	9-12-16			
Dept. Head: Sam Ryan					
Prosecutor: Royce Buckingham					
Purchasing/Budget:					
Executive: Jack Louws					

TITLE OF DOCUMENT:
2016 Critical Areas Ordinance Update

ATTACHMENTS: (these materials can also be found at <http://www.whatcomcounty.us/2417/County-Council-Review>)
 A. Staff memo to Council dated 1 August 2016
 B. 2016 Best Available Science (BAS) addendum/staff report (as approved by the Planning Commission)
 C. Draft code (as approved by the Planning Commission),
 D. Draft Findings of Fact (as approved by the Planning Commission)

SEPA review required? (X) Yes () NO	Should Clerk schedule a hearing? (X) Yes () NO
SEPA review completed? (X) Yes () NO	Requested Date: 10/25/16

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)
 Proposed ordinance to amend Whatcom County Critical Areas Ordinance (CAO) (WCC 16.16) pursuant to RCW 36.70A.130(1). The Growth Management Act (RCW 360.70A) defines critical areas as wetlands, frequently flooded areas, fish and wildlife habitat conservation areas (including streams), geologically hazardous areas, and critical aquifer recharge areas. The purpose of this periodic update is to ensure that the CAO meets the GMA requirements, including consistency with the Whatcom County Comprehensive Plan, best available science, and state agency guidance updates. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying and updating administrative procedures, etc. The County is also required to integrate the CAO provisions with its Shoreline Master Program (SMP). Whatcom County has done so by adopting the CAO by reference within the SMP (WCC 23.10.060(A)). This reference is also proposed to be amended.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number:
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.



Memorandum

TO: The Honorable County Council
FROM: Cliff Strong, Senior Planner *CS*
THROUGH: Mark Personius, Asst. Director *MP*
DATE: 1 August 2016
SUBJECT: Critical Areas Ordinance Update 2016

Schedule

PDS Staff has been working with the chairs of the Committee of the Whole (COTW) and Natural Resources Committee to lay out a preliminary schedule for your review of the Planning Commission-recommended Critical Areas Ordinance update. Both felt it would be best to work through the COTW for this ordinance.

Given your upcoming budget review (and other business) there isn't much time remaining this year to do the complete review¹. Nonetheless, it was thought that we should at least provide you with the materials, an introductory presentation, and a public hearing so that you could start reading and hear from the public.

Thus, we are providing you with a binder of materials, and have scheduled an initial staff briefing and public hearing². Staff will do an overview presentation to the COTW on September 20, 2016, and your first public hearing will be held on October 11, 2016. We will then pick it up again either in December or January 2017, depending on your schedule.

What to Start Reading

In preparation, we suggest that you begin reading the attached materials. These include:

- this cover memo,
- the 2016 Best Available Science (BAS) addendum/staff report (as approved by the Planning Commission),
- the draft code (as approved by the Planning Commission), and
- the draft Findings of Fact (as approved by the Planning Commission).

¹ By law, the CAO has the same deadline for adoption as the Comprehensive Plan, namely June 31, 2016. However we have a *de facto* 1-year grace period and the Department of Commerce is aware of our progress and situation.

² Your chairs felt that 3 public hearings should be held: one at the beginning of the review process, one in the middle, and one towards the end.

For the first meeting we would suggest that, if nothing else, you read the 2016 BAS addendum/staff report, which provides the review's purpose, background, and process used to draft the amendments, as well as lists of the more substantive amendments being proposed.

You should also review or at least familiarize yourselves with the BAS studies, public comments received, and the 2005 BAS report, all of which can be found at <http://www.whatcomcounty.us/2417/County-Council-Review>. (These are extensive, which is why we're not including hard copies of them in your packet. However, if you wish, we can copy them for you.)

Proposed substantive changes include:

- Allowing for an in-lieu fee program
- Better describing and classifying landslide and alluvial fan areas
- Amending the lahar inundation zone language to allow most uses allowed in the underlying zone
- Integrating the requirements of the FEMA Biological Opinion into the Frequently Flooded Areas and Habitat Conservation Area requirements.
- Updating the wetlands classification system to meet the Department of Ecology's newer rating system
- Changing the minimum size of a regulated Class IV wetland from 4,356 to 1,000 square feet
- Adding new standards for trails in wetland and habitat conservation area buffers
- Adding language from the new Ecology guidance (land use intensity table) regarding what type of measures will reduce use intensity
- Amending the wetland replacement ratio table based on the new DOE classification system
- Better clarifying the difference between regulated streams and non-regulated ditches
- Deleting the ability to install private launch ramps in HCAs
- Requiring that an analysis be done prior to the removal of beaver and their dams
- Adding a mitigation ratio for HCA buffer impacts.
- Requiring HCA buffer enhancement where buffer has been reduced
- Amending and adding several definitions

Potential Follow-Up Actions

The BAS/Staff report also contains a list of follow-up issues that arose during the drafting. Section 13.1 lists some *Administrative Follow-Up Actions* that Planning and Development Services will work on after adoption. Section 13.2, however, lists

some bigger *Follow-Up Actions That Would Need Council Support* (i.e., budget and direction). These items, though related to the CAO, were outside of the scope (and budget) of the update, though most committee members agreed they should be done. Thus, they are presented for your consideration.

Shoreline Management Program Amendment

As you may be aware, the courts found that Critical Areas Ordinances do not (automatically) apply in the shoreline areas. Some jurisdictions have solved this by having a separate set of similar regulations in their Shoreline Management Program. However, many, including Whatcom County, chose to adopt their standard CAO by reference in their SMP, thus making those rules apply.

Thus, in the final adoption staff will also be asking you to do a minor amendment to the Shoreline Management Program. Whatcom County's adoption by reference is found in WCC 23.10.060(A). The below text shows that section, and the amendment proposed by staff.

23.10.060 References to plans, regulations or information sources.

- A. The Whatcom County critical areas ordinance, Chapter 16.16 WCC (Ordinance No. ~~2005-068~~ _____, dated ~~September 30, 2005~~ _____, 2016, and ~~as amended on February 27, 2007~~) is hereby adopted in whole as a part of this program, except that the permit, nonconforming use, appeal and enforcement provisions of the critical areas ordinance (WCC ~~16.16.270~~ 16.16.270 through 16.16.285) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16 WCC, are for this specific version.
- B. Where this program makes reference to any RCW, WAC, or other state or federal law or regulation, the most recent amendment or current edition shall apply.
- C. Stipulated Judgment No. 93-2-02447-6 between Governor's Point Development Company and Whatcom County, the state of Washington, and the Department of Ecology is incorporated by reference into Whatcom County's shoreline management program. A copy of the judgment is on file with the Whatcom County Planning and Development Services Department.