Critical Areas Ordinance
2016 Update
County Council Review
Presentation #1 - Overview
20 September 2016
Today’s Topics

- Background
  - Requirements
  - Best Available Science
  - Process
  - Schedule
- Overview of global changes
- Overview of the more substantive changes
- Overview of follow-up items
Background

- First adopted in early 1990’s
- Last updated in 2005, and since then:
  - Changes have been made to the RCWs, the WACs, and the guidance documents issued by various agencies
  - The Growth Management Hearings Boards and the Courts have ruled on numerous cases
  - There have been new studies done that contribute to the body of Best Available Science (BAS)
  - Planning and Development Services procedures have changed
  - Local issues have arisen
Growth Management Act Requirements

- All cities and counties in Washington are required to:
  - Adopt critical areas regulations (RCW 36.70A.060)
  - *Include* the Best Available Science in developing policies and development regulations to protect the functions and values of critical areas (RCW 36.70A.172)
  - Give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries (RCW 36.70A.172)
  - Conduct periodic updates (RCW 36.70a.130)
- Regulations must be consistent with Comprehensive Plan goals and policies
Growth Management Act Requirements

• Required to review, and if necessary, update the CAO by June 2016. However, we have a 1-year grace period.
• Review consists of reviewing and considering whether there have been any new:
  • changes to state law,
  • Growth Management Hearings Board cases,
  • court cases, or
  • Best Available Science (BAS).
• Additionally, we can use this opportunity to fix issues identified as a problem in terms of administration
What is Best Available Science?

- WAC 365-195-905: To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process.
- The characteristics generally to be expected in a valid scientific process are:
  - Peer reviewed
  - Methods clearly stated and able to be replicated
  - Logical conclusions and reasonable inferences
  - Quantitative analysis
  - The information is placed in proper context
  - Well referenced
What Isn’t BAS?

- Non-published, non-peer reviewed, non-scientific papers or pamphlets or web sites
- Stories, hearsay, beliefs
How Must We Use Best Available Science?

• “Following enactment of RCW 36.70A.172, science-based recommendations cannot simply be disregarded in favor of competing considerations. Informed decision-making requires that decision makers receive scientific information that has not been filtered through screens of competing interests.”

• Ultimately the burden is on the local government to determine whether the scientific information assembled in fact constitutes the best available science.

• Must base decisions on BAS, and if not...

• Must have a valid reason and explain why
What Does “Include” Mean?

- WAC 365-195-915 provides criteria for demonstrating that the best available science has been “included” in the development of critical areas policies and regulations. The local government’s record supporting adoption of those policies and regulations should include the following:
  - The specific policies and regulations adopted to protect the functions and values of critical areas.
  - Copies of (or references to) the best available science used in the decision-making.
  - The nonscientific information used as a basis for departing from science-based recommendations.
  - The rationale supporting the local government’s reliance on the identified nonscientific information.
  - Actions taken to address potential risks to the functions and values of the critical areas the policies and regulations are intended to protect.
Process

1st Step – Staff Team
- Cliff Strong – Project Manager
- Wayne Fitch/Ryan Ericson – NR Supervisor
- Erin Page – Biologist
- Amy Dearborn – Biologist
- Andy Wiser – Geologist
- Matt Mahaffie – CPAL
- John Thompson – DPW Natural Resources
- Travis Bouma – DPW Floods

Non-staff
- George Boggs – Whatcom Conservation District
Process

- **2nd Step – Technical Advisory Committee (TAC)**
  - Comprised of government agency staff (tribal, state, federal) and other professionals.
  - Technical experts in various fields
    - Joel Ingram – WA Dept of Fish & Wildlife
    - Susan Meyer/Diane Hennessey – WA Dept of Ecology
    - Oliver Grah – Nooksack Tribe
    - Kara Kuhlman – Lummi Nation
    - Pete Sim – BP
    - Dan McShane – Stratum Group
    - Wendy Steffensen – RE Sources
    - Ryan Ericson – Futurewise
    - Bert Rubash – Marine Resources Committee
Process

- **3rd Step – Citizens' Advisory Committee (CAC)**
  - Stakeholders from building & development, environmental, agricultural, industrial/commercial, shoreline property owners, and a citizen-at-large).
  - Audrey Borders
  - David Haggith
  - Kate Blystone
  - Laura Sachs
  - Roger Almskaar
  - Virginia Watson
  - Wendy Harris
  - Wes Kentch
The Committees:
- Met and reviewed for 1-½ years
- Heard presentations from various staff (and others) covering the various topics. Staff explained how they do their review, how they implement the code, and their suggestions for improvement.
- Helped develop list of potential issues
- Reviewed proposed code amendment language
- Provided BAS studies to support proposed amendments
- TAC members each took on sections of the code (within their area of expertise) and reviewed with the committees.
Mostly consensus based, though votes were taken on a few issues.

No one achieved everything they wanted, and you’ll probably hear from them.

To see where edits originated:
  - Using the Word Version, hover over amendments and name will pop up
  - There’s a key to initials at beginning of code
Planning Commission Review

- From February through June 2016, held:
  - 6 workshops
  - 2 public hearings
- P/C amendments shown in draft code
- Recommended approval of draft:
  - Code
  - BAS Addendum
  - Findings of Fact
Findings of Fact

- The Planning Commission amended FoF 13 from staff’s proposed (DOC’s recommended) as follows:
  - The proposed regulations for critical areas are sufficient and appropriate to protect the functions and values of those areas consistent with the Whatcom Comprehensive Plan and Growth Management Act.
  - Language was deleted because some members felt we did not have adequate monitoring data to show that this is the case.
  - For legal reasons, it would be best to reinset this language if the Council felt otherwise.
Initial Presentation #1 (Overview) – 20 Sept 2016
Public Hearing #1 – 25 Oct 2016 (changed from memo)
  • We anticipate at least 2 more public hearings (middle and end of process)
Will start detailed review of chapters beginning in January 2017
  • Administration
  • Geologically Hazardous Areas
  • Frequently Flooded Areas
  • Critical Aquifer Recharge Areas
  • Lummi Island
  • Wetlands
  • Habitat Conservation Areas
  • Conservation Program on Agriculture Lands
  • Definitions
We anticipate Council review to take 2-3 months, perhaps longer
Supporting Materials

- 2005 Best Available Science Report
- 2016 Best Available Science Supplemental Report
- Best Available Science studies
- Written comments
  - CAC
  - TAC
  - Staff
  - Public
- All are posted on the CAO Update website
  - PDS > Planning > Long Range Planning > Projects & Programs > Critical Areas Update > County Council Review
Questions up to this point?
Global Changes to the Code

- In general, many of the amendments pertain to:
  - Correcting grammar
  - Updating references to other documents or laws
  - Clarifying procedures
  - Moved a few subsections to sections they seemed to fit into better.
  - Separated a few larger sections into distinct sections
Global Changes to the Code

- Throughout the code:
  - Many of the “mays” are proposed to be changed to “shall”
    - Was believed that in instances where the language spoke to the Technical Administrator, less discretion should be afforded due to a perceived history of previous staff being too lenient
Substantive Changes

- 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 zones
- 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
Substantive Changes

- 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
Substantive Changes

- 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
Shoreline Management Program (SMP) Amendment

• The courts found that Critical Areas Ordinances do not (automatically) apply in the shoreline areas
• We adopted our CAO by reference in our SMP
• In the final adoption staff will be asking you to do a minor amendment to the Shoreline Management Program

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 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.
Additional Potential Amendments

- Natural Resource Supervisor recently raised a few more amendments to consider:
  - Allow for a programmatic permit to cover Lake Whatcom Homeowner Incentive Program (HIP) projects within the shoreline jurisdiction
  - Amend the definition of Major Development
  - Possibly amend the stream typing
- Staff is working through these and, if necessary, propose language when we’re reviewing the appropriate chapters.
Questions up to this point?
Follow-Up Actions
(Administrative)

- Update Critical Area maps
  - With any new data
  - Add a better disclaimer
  - Start requiring electronic versions of delineations with each new delineation
  - Show Stewart Mountain as part of the Chuckanut wildlife corridor
- Various geohazard items
- Rescind PDS policies that were incorporated into code
- Develop and periodically update protected species and habitat lists for the public (for the counter and website) based on state and federal agencies’ lists
Potential Follow-Up Actions
(Would Need Council Support)

- Geohazards Mapping, Risk Analysis and Emergency Planning
  - Use new, soon-available LiDAR data to:
    - better delineate lahar inundation zones and develop travel time zones and formal emergency management and evacuation plans
    - update the alluvial fan and landslide inventory GIS layers, to map potentially unstable landforms, and to develop landslide susceptibility maps
  - Update landslide hazard classification system when new data is available
  - Fund and develop an internal process and resources to systematically update and maintain the hazards geospatial database
  - Publicly adopt geohazard acceptable levels of risk
Potential Follow-Up Actions
(Would Need Council Support)

- Develop a better long-term monitoring system
- Develop a watershed/landscape-based planning system
- Develop one or more County-sponsored mitigation banks, possibly in cooperation with other local jurisdictions
- Develop an in-lieu mitigation fee program
- Develop an annual CPAL Report
Potential Follow-Up Actions
(Would Need Council Support)

- Offer conservation farm plan training
- Determine boundaries of and formally adopt channel migration zones on the County’s major waterways
Questions/Discussion