



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

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[www.commerce.wa.gov](http://www.commerce.wa.gov)

February 10, 2016

Cliff Strong  
Senior Planner  
Whatcom County  
5280 Northwest Drive  
Bellingham, Washington 98226

Dear Mr. Strong:

Thank you for sending the Washington State Department of Commerce (Commerce) the following materials as required under RCW 36.70A.106. Please keep this letter as documentation that you have met this procedural requirement.

**County of Whatcom - Proposed amendment to the Critical Areas Ordinance (WCC 16.16) pursuant to RCW 36.70A.130. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying procedures, etc. There are very few substantive changes. 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 will need to be updated to reflect the 2016 revised CAO once it's adopted. These materials were received on February 09, 2016 and processed with the Material ID # 22083.**

We have forwarded a copy of this notice to other state agencies.

If this submitted material is an adopted amendment, then please keep this letter as documentation that you have met the procedural requirement under RCW 36.70A.106.

If you have submitted this material as a draft amendment, then final adoption may occur no earlier than April 09, 2016. Please remember to submit the final adopted amendment to Commerce within ten (10) days of adoption.

If you have any questions, please contact Growth Management Services at [reviewteam@commerce.wa.gov](mailto:reviewteam@commerce.wa.gov), or call Dave Andersen (509) 434-4491.

Sincerely,

Review Team  
Growth Management Services



# Department of Commerce

Innovation is in our nature.

## Notice of Intent to Adopt Amendment 60 Days Prior to Adoption

Indicate one (or both, if applicable):

- Comprehensive Plan Amendment  
 Development Regulation Amendment

Pursuant to RCW 36.70A.106, the following jurisdiction provides notice of intent to adopt a proposed comprehensive plan amendment and/or development regulation amendment under the Growth Management Act.

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| <b>Jurisdiction:</b>                                                                                                                                                                                                                                                                                                          | Whatcom County                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Mailing Address:</b>                                                                                                                                                                                                                                                                                                       | 5280 Northwest Drive<br>Bellingham, WA 98226                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Date:</b>                                                                                                                                                                                                                                                                                                                  | 2/9/2016                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Contact Name:</b>                                                                                                                                                                                                                                                                                                          | Cliff Strong                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Title/Position:</b>                                                                                                                                                                                                                                                                                                        | Senior Planner                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Phone Number:</b>                                                                                                                                                                                                                                                                                                          | 360.778.5942                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>E-mail Address:</b>                                                                                                                                                                                                                                                                                                        | <a href="mailto:cstrong@co.whatcom.wa.us">cstrong@co.whatcom.wa.us</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Brief Description of the Proposed/Draft Amendment:</b><br><i>If this draft amendment is provided to supplement an existing 60-day notice already submitted, then please provide the date the original notice was submitted <b>and</b> the Commerce Material ID number located in your Commerce acknowledgement letter.</i> | Whatcom County is proposing to amend its Critical Areas Ordinance (WCC 16.16) pursuant to RCW 36.70A.130. Numerous amendments are being proposed, though most of them pertain to correcting grammar, updating references to other documents or laws, clarifying procedures, etc. There are very few substantive changes. 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 will need to be updated to reflect the 2016 revised CAO once it's adopted. The draft code, Best Available Science report, and supporting documents can be found at <a href="http://wa-whatcomcounty.civicplus.com/1153/Critical-Areas-Update">http://wa-whatcomcounty.civicplus.com/1153/Critical-Areas-Update</a> . |
| <b>Is this action part of the scheduled review and update?</b><br><i>GMA requires review every 8 years under <a href="#">RCW 36.70A.130(4)-(6)</a>.</i>                                                                                                                                                                       | Yes: <input checked="" type="checkbox"/><br>No: <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Public Hearing Date:</b>                                                                                                                                                                                                                                                                                                   | Planning Board/Commission: 4/28/16 (tentative)<br>Council/County Commission: 6/28/16 (tentative)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Proposed Adoption Date:</b>                                                                                                                                                                                                                                                                                                | 6/28/16 (tentative)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

**REQUIRED:** Attach or include a copy of the proposed amendment text or document(s). **We do not accept a website hyperlink requiring us to retrieve external documents. Jurisdictions must submit the actual document(s) to Commerce.** If you experience difficulty, please contact [reviewteam@commerce.wa.gov](mailto:reviewteam@commerce.wa.gov).



## DEVELOPMENT REGULATIONS CHECKLIST

A Technical Assistance Tool From Growth Management Services – update July 2013

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| <b>Name of city or county:</b> Whatcom County                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                       |
| <b>Staff contact, phone, and e-mail address:</b> Cliff Strong, 360.676.6907, <a href="mailto:cstrong@co.whatcom.wa.us">cstrong@co.whatcom.wa.us</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                       |
| <p><b>Instructions:</b></p> <p>This checklist is intended to help local governments update their development regulations, as required by <a href="#">RCW 36.70A.130(4)</a>. We encourage but do not require jurisdictions to complete the checklist and return it to Growth Management Services (GMS). This checklist is for local governments with a full set of requirements under the Growth Management Act (GMA), not for those planning for resource lands and critical areas only. For general information on update requirements, refer to <i>Keeping your Comprehensive Plan and Development Regulations Current: A Guide to the Periodic Update Process under the Growth Management Act</i> and <a href="#">WAC 365-196-610</a>.</p> <p><b>Bold items are a GMA requirement.</b> Other items may be requirements of other state or federal laws, best practices, or other ideas to consider. <b>Highlighted</b> items are links to Internet sites. If you have questions, call GMS at (360) 725-3066.</p> | <p><b>Index of Topics in Checklist</b></p> <p>Critical Areas <span style="float: right;">1</span></p> |

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| <p>Critical Areas Regulations protecting critical areas are required by <a href="#">RCW 36.70A.060(2)</a>, <a href="#">RCW 36.70A.172(1)</a> and <a href="#">WAC 365-195-900</a> through <a href="#">925</a>. Guidance can be found in CTED’s <i>Critical Areas Assistance Handbook</i> and <a href="#">WAC 365-190-080</a>.</p>                                                                                                                                                                                                                                                                       |                                                                                                                                  |                                                                                                                                                                                                                                                                                                            |
| <p>a. <b>The CAO uses best available science to clearly designate all critical areas that might be found within the jurisdiction.</b> <a href="#">WAC 365-190-080</a> provides guidance on defining or “designating” each of the five critical areas including wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. <a href="#">WAC 365-195-315</a>, <a href="#">RCW 36.70A.172</a>, <a href="#">RCW 36.70A.170(1)(d)</a> <a href="#">RCW 36.70A.030(5)</a> and <a href="#">WAC 365-196-830(2)</a></p> | <p><input checked="" type="checkbox"/> All critical areas designated using Best Available Science (BAS)</p>                      | <p>But was done in 2005. Need to check to see if there’s any more recent BAS that would cause us to amend something.</p>                                                                                                                                                                                   |
| <p>b. <b>The definition of wetlands is consistent with <a href="#">RCW 36.70A.030(21)</a>. Wetlands are delineated using the 1987 Wetland Delineation Manual and Regional Supplements in accordance with <a href="#">WAC 173-22-035</a>.</b> See <a href="#">Wetland Delineation</a> page and <a href="#">WAC 365-190-090</a> for additional assistance.</p>                                                                                                                                                                                                                                           | <p><input checked="" type="checkbox"/> Wetland definition<br/><input checked="" type="checkbox"/> Wetland Delineation Manual</p> | <p>Definition is almost identical. The WWC refers to <a href="#">RCW 36.70A.175</a>, which refers to <a href="#">RCW 90.58.380</a>, which references the 1987 manual; thus, we appear to be consistent with state law. However, updating to the most recent wetland manuals and classification scheme.</p> |

| Regulations required to implement comprehensive plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page #, and how addressed in code                                                                                                                                                                            | Update action, if needed                                                                                                                                                                                                                                 |
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| <p>c. <b>Regulations protect the quality and quantity of groundwater used for public water supplies.</b> <a href="#">RCW 36.70A.070(1)</a> (Required if jurisdictions draw groundwater for potable water or need to manage threats to exempt wells.) Consider:</p> <p><b>(i) Prohibiting or strictly regulating hazardous uses in critical aquifer recharge areas (CARAs) and designating and protecting wellhead areas. See Ecology’s guidance on <a href="#">Critical Aquifer Recharge Areas (CARAs)</a>.</b></p> <p><b>(ii) Limiting impervious surfaces to reduce stormwater runoff, required in many places by new stormwater permits. See Puget Sound Action Team’s low impact development guidance at <a href="http://www.psat.wa.gov/Programs/LID.htm">www.psat.wa.gov/Programs/LID.htm</a>.</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <input checked="" type="checkbox"/> Regulations protect quality and quantity of ground water                                                                                                                 | <p>We don’t restrict uses, but rather require them to meet state and federal requirements for hazardous containment. We don’t currently limit impervious surfaces in the Rural designation, though there is a proposal under consideration to do so.</p> |
| <p>d. <b>Fish and wildlife habitat conservation areas:</b> CAO provisions refer to the Department of Fish and Wildlife’s (DFW) Priority Habitats and Species program. See <a href="http://wdfw.wa.gov/hab/phslist.htm">wdfw.wa.gov/hab/phslist.htm</a> for lists of priority habitats and species, maps, and management recommendations. Designation and protection should be coordinated with adjacent jurisdictions when habitat areas cross boundaries. See <a href="#">WAC 365-190-130</a> for specific habitat conservation areas, and factors to consider for their designation and protection such as coordination when habitat areas cross-jurisdictional boundaries or provide regional benefits, or retention of large blocks of habitat. <b>Regulations for fish and wildlife habitat conservation areas include special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</b> <a href="#">RCW 36.70A.172(1)</a>. <a href="#">WAC 365-195-925</a> lists criteria. See <a href="http://www.dnr.wa.gov/forestpractices/watertyping">www.dnr.wa.gov/forestpractices/watertyping</a> to use Washington State Department of Natural Resources (DNR)’s stream typing system. See <a href="#">Watershed (WRIA) Plans</a>, <a href="#">DFW’s Stream Habitat Restoration Guidelines</a>, and <a href="#">Aquatic Habitat Guidelines</a>. <a href="#">WAC 222-16-030</a> and <a href="#">Forest Practices Water Typing</a>.</p> | <input checked="" type="checkbox"/> Regulations designate and protect fish and wildlife habitat conservation areas<br><br><input checked="" type="checkbox"/> Special consideration for anadromous fisheries | <p>Need to see if the lists have changed since last adoption.</p>                                                                                                                                                                                        |
| <p>e. <b>Frequently Flooded Areas:</b> Classification of and regulations for frequently flooded areas should be consistent with the <a href="#">Federal Emergency Management Agency (FEMA) requirements</a> for the National Flood Insurance Program. A local flood management ordinance may be integrated with regulations for frequently flooded areas. See <a href="#">RCW 86.16</a>, Ecology’s flood-plain management assistance and <a href="#">WAC 365-190-110</a> for</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <input checked="" type="checkbox"/> Frequently flooded areas designated and regulated using FEMA and Ecology guidance                                                                                        |                                                                                                                                                                                                                                                          |

| Regulations to implement comprehensive plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Location in code                                                                 | Update action needed                                                                                    |
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| more information.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                  |                                                                                                         |
| <p>f. <b>Geologically hazardous areas are designated, and their use is regulated or limited</b> consistent with public health and safety concerns. <a href="#">RCW 36.70A.030(9)</a> and <a href="#">WAC 365-190-120</a>.<br/>           Geohazard areas defined in <a href="#">RCW 36.70A.030(9)</a> and include areas prone to erosion hazards, landslide hazards, seismic hazards, volcanic hazards, channel migration zones, and areas subject to differential settlement from coal mines or other subterranean voids.<br/>           Critical facilities, such as hospitals and emergency response centers, hazardous materials storage, etc. should be restricted in hazard zones</p> | <input checked="" type="checkbox"/> Uses in geohazard areas regulated or limited |                                                                                                         |
| <p>g. <b>Geologically hazardous areas:</b> Designate according to criteria in <a href="#">WAC 365-190-120</a>.</p> <ul style="list-style-type: none"> <li>Limit uses, especially facilities such as emergency response, hospitals, hazardous materials storage, etc.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                             | <input checked="" type="checkbox"/> Geohazard areas designated and risks managed |                                                                                                         |
| <p>h. <b>The CAO allows for “reasonable use” if the CAO would otherwise deny all reasonable use of property.</b><br/>           Reasonable use should limit intrusions into critical areas to the greatest extent possible. <a href="#">RCW 36.70A.370</a>. Common exemptions include emergencies, remodels that do not further extend into critical areas, surveying, walking, and development that have already been completed and critical areas review under a previous permit. See <a href="#">Critical Areas Assistance Handbook, p. 37-38</a>.</p>                                                                                                                                   | <input checked="" type="checkbox"/> Reasonable use provisions                    |                                                                                                         |
| <p>i. <b>Non-regulatory measures</b> to protect or enhance functions and values of critical areas may be used. These may include public education, stewardship programs, pursuing grant opportunities, water conservation, farm planning, joint planning with other jurisdictions and non-profit organizations, stream and wetland restoration activities, etc. See <a href="#">Critical Areas Assistance Handbook</a> for more information.</p>                                                                                                                                                                                                                                            |                                                                                  |                                                                                                         |
| <p>j. <b>If applicable, regulations for forest practices have been adopted.</b> <a href="#">RCW 36.70A.570</a><br/> <a href="#">RCW 76.09.240</a>, amended in 2011, requires many counties over 100,000 in population, and the cities and towns within those counties to adopt regulations for forest practices. These are often included in clearing and grading ordinances.</p>                                                                                                                                                                                                                                                                                                           | <input type="checkbox"/> Forest practices regulations                            | Have not done this. Planning on taking over Class IV FP once our CompPlan is found to be GMA compliant. |