Critical Areas Ordinance
2016 Update

County Council Review
Workshop 2
10 January 2017
Today’s Workshop Topics

- Logistics
  - Anticipated Schedule
  - A note about changes proposed post-Planning Commission recommendation

- Overview of Certain Proposed Amendments to:
  - Global Changes
  - Article 1 – Purpose
  - Article 2 – Administrative Provisions
  - Article 5 – Critical Aquifer Recharge Areas
  - Article 5.5 – Lummi Island
  - Article 9 – Definitions
## Anticipated Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic(s)</th>
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| 1/10 | • Article 1 – Purpose  
      • Article 2 – Administrative Provisions  
      • Article 5 – Critical Aquifer Recharge Areas  
      • Article 5.5 – Lummi Island  
      • Article 9 – Definitions |
| 1/24 | • Article 4 – Frequently Flooded Areas  
      • Article 7 – Habitat Conservation Areas |
| 2/7  | • Article 6 – Wetlands  
      • Article 8 – Conservation Program on Agriculture Lands |
| 2/21 | • Article 3 – Geologically Hazardous Areas |
| 3/7  | • Review of Any Outstanding Issues |
| 3/21 | • Introduction of Ordinance |
| 4/11 | • Public Hearing  
      • Adoption |
Changes Proposed Post-Planning Commission Recommendation

- Natural Resources Division 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 (Art. 7)
  - Amend the definition of Major Development (Art. 9)
  - Possibly amend the stream typing (Art. 7)
- Staff is working through these and, if necessary, propose language when we’re reviewing the appropriate chapters.
Remember the 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:
  - http://www.whatcomcounty.us/2417/County-Council-Review
Global Changes

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
- Many of the “mays” are proposed to be changed to “shall”
Article 1 – Purpose

- No proposed changes
Before we address the proposed amendments Ryan will give a short primer on how the Natural Resources staff does their work.
Natural Resource Review Process

Good work, but I think we might need just a little more detail right here.
What does NR Staff Review?

<table>
<thead>
<tr>
<th>ADM</th>
<th>CUP</th>
<th>VAR</th>
<th>COM</th>
<th>CA</th>
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SHC 13

SHV 2
Permit Review Overview

- Permit Overview
  - Pre-Application
  - CA Case – SFR
  - Underlying Permit
    - ADM, COM, CUP, VAR, Long/Short Plat

- Review Flow
  - Prescreen
  - Assign Case
  - Office Review
  - Site Visit
  - NOAR
  - Approval
Permit Review Overview

- **Prescreen**
  - Use Critical Area maps, GIS, Permit Tracking System, and staff knowledge
- **Four possible outcomes:**
  - No Critical Areas
  - Waived
    - Previous review and approval
    - All critical areas identified and delineated
    - Compliance with previous mitigation
    - New proposal less intense than previous
  - No further NR Review required
  - NR Assessment required
Permit Review Overview

- NR Application
  - Complete Application Letter
  - Notice of Additional Requirements (NOAR)
    - Date of site visit
    - Office review determination
    - 180 days or code
    - Respond to submitted materials
- Approval through Natural Resource Assessment Determination (NRAD)
  - Written findings
  - Current planning format
New Procedures

- Incomplete Submittal not accepted
- Counter checklist
- Submit all NOAR
- NOAR status Tidemark
- Second Review Fee
Throughout Many of the “mays” are proposed to be changed to “shall,” as it is 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.

16.16.230 **Exempt activities.** Moved tree felling activities from Exempt Activities to 16.16.235(B)(4) Activities allowed with notification, as a tree risk assessment is a submittal requirement to determine if a tree meets the definition of Hazard Tree.

16.16.230(G) **Exempt activities.** Moved restoration activities to Exempt Activities (from Activities allowed with notification), as these types of activities are exempt per RCW 77.55.181(4)).

16.16.235(B)(8) **Activities allowed with notification.** Deleted the use of pesticides in buffers as an “Activity allowed with notification” since insects are important to the food chain. Also clarified that herbicides only be allowed for eradicating invasive species, not native plants.
# Article 2 – Administrative Provisions

<table>
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<tr>
<td>16.16.240(A)(2) &amp; (C)(2)</td>
<td><strong>Technical administrator and hearing examiner authority.</strong> Proposed amendment would give the Technical Administrator decision-making authority over all Reasonable Use Permits for single-family residential uses, including those in geohazard area, so as to minimize cost to the typical homeowner.</td>
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<tr>
<td>16.16.250</td>
<td><strong>Submittal requirements and critical areas review process.</strong> Amended section to reflect process developed under Kaizan review procedures and now used.</td>
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<tr>
<td>16.16.260</td>
<td><strong>General mitigation requirements.</strong> Though mitigation sequencing has always been a requirement, and that alternatives and cumulative impacts be analyzed, the code wasn’t clear that these should be explicitly addressed. Amendments to this section make that more clear.</td>
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<td>16.16.260(E)</td>
<td><strong>General mitigation requirements.</strong> Added a paragraph explicitly stating that mitigation areas are to be permanently protected, though that if future development is proposed on the mitigation site, any restrictions can be removed as long as the final plan meets the requirements of this chapter for all cumulative impacts.</td>
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### Article 2 – Administrative Provisions

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<tr>
<td>16.16.261, 262, and 263</td>
<td>Three different alternative mitigation strategies (<em>Alternative or Innovative Mitigation Plans, Watershed-Based Management Plans, and Mitigation Banking</em>) were contained in one section. These have been broken into three sections now, and a new section 263(D) (<em>Use of Bank Credits</em>) added based on DOE guidance.</td>
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<tr>
<td>16.16.264</td>
<td><strong>In-Lieu Fees.</strong> Added a new section to allow an in-lieu fee program be set up. This language, which comes from DOE guidance documents, allows for such a program to be established.</td>
</tr>
<tr>
<td>16.16.265(B)</td>
<td><strong>Critical areas protective measures.</strong> Added language that would allow the Technical Administrator to waive the notice on title requirement for certain, low risk geohazards.</td>
</tr>
<tr>
<td>16.16.265(E)</td>
<td><strong>Critical areas protective measures.</strong> Added a requirement that applicants indemnify the County when a permit is granted for development or use within a geologic, flood, or other hazard area.</td>
</tr>
<tr>
<td>16.16.265(F)</td>
<td><strong>Critical areas protective measures.</strong> Added a paragraph notifying applicants that temporary protection measures are required during construction.</td>
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<th>Section</th>
<th>Reasonable use and Variances.</th>
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<th>Appeals.</th>
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<td>16.16.270 and 16.16.273</td>
<td>In the existing code, the rules for reasonable use permits and variances are contained in the same section. However, these are very different mechanisms, and it was thought they each deserve their own section so were split. Most changes in these sections have to do with separating them out.</td>
<td>Split g &amp; h into two sections. Amended (g) to state that any proposed activities won’t cause damage to other properties, and (h) to state that the activities won’t increase risk, as opposed to guarantee no threat, which is an impossibility (earthquakes and other geohazards may still happen; no one can guarantee they won’t).</td>
<td>PDS Administrative Policy PL5-85-001A (CAO Reasonable Use/SMP Variance (has been incorporated into the code. This policy sets the Maximum Impact Area of 2,500 sf for CAO reasonable uses and Shoreline Management Program variances and has been in place since 4/17/08.</td>
<td>Amended the language to require that any issues brought on appeal to the courts were raised and heard by the County’s appeal body first. This is a standard legal practice for appeals these days.</td>
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<td>16.16.285(I)</td>
<td><strong>Penalties and enforcement.</strong> Added an “After the Fact Permit Fee.” Charging “after the fact” fees is consistent with how PDS handles “atf” building permits. It should be cheaper to ask for permission than forgiveness.</td>
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<tr>
<td>16.16.290</td>
<td><strong>Conservation program on agricultural lands.</strong> The CPAL provisions (290 and Appendix A) have been combined and moved to a new Article 8.</td>
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</table>
Article 5 – Critical Aquifer Recharge Areas

- No proposed changes other than a cross-reference

- Should point out that a member of the public has argued that agricultural uses should be treated as a polluting industry in terms of water quality (nitrates) and that we ought to be requiring farmers to submit reports and mitigation.

- However, staff has found no other jurisdictions that treats agriculture in this manner.
Article 5.5 – Lummi Island

- No proposed changes other than grammatical
Article 9 – Definitions

- Adding definitions of:
  - “Bankfull width”
  - “Cumulative Impact”
  - “Designated Species, Federal” “Designated Species, State”
  - "Habitats of Local Importance” (from WAC 365-190-030)
  - “Maximum Credible Event”
  - “Practicable Alternative”
  - "Species of Local Importance" (from WAC 365-190-030)
  - “Stormwater Manual” (referred to throughout as a source for Best Management Practices)
  - “Waters of the State” (from RCW 90.56.010(26))
Amending definitions of:

- "Critical Facilities" to keep maximum occupancy of uses under 500 and to exclude cell towers from the definition (needed if an emergency occurs)
- "Drainage Ditch" to try to clear up the public confusion between ditches and streams
- "Fish and wildlife habitat conservation areas" as the state definition has been amended*
- "Geologically Hazardous Areas" to make consistent with the GMA definition in RCW 36.70A.030(9)
- "High Intensity Land Use" to include Class IV Special forest practices (conversion of forest to development)

* Amended since the P/C recommendation
Article 9 – Definitions

- Amending definitions of:
  - “Hydric Soil” by changing the reference to that commonly used now
  - “Moderate Intensity Land Use” to exclude nurseries and logging roads, both of which the TAC believe should be in the high intensity land use category
  - “Planning Advisor,” rather than “Qualified Planning Advisor” (“qualified” is not used in the text so it was hard to find in the definitions.)
  - “Qualified Professional” to increase the years of professional experience needed for wetland biologist from 3 to 5 years, and to exclude those consultants who’ve had their certification revoked
  - “Reestablishment,” “Rehabilitation,” and “Restoration” to make consistent with USACE definitions