

STAFF REPORT WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES

I. BACKGROUND INFORMATION

File #: ZON2004-00025

File Name: Whatcom County Critical Areas Ordinance

Applicant: Whatcom County Planning and Development Services Department

Public Notice: Pursuant to RCW 36.70.590, legal notice was published in the Bellingham Herald on March 14, 2005 and a Planning Commission public hearing is scheduled on Thursday, March 24, 2005.

SEPA: The Whatcom County SEPA Official issued a Determination of Non-significance (DNS) for the proposed *Whatcom County Critical Areas Ordinance* update on February 22, 2005.

Summary of Request: The request is to amend WCC, Chapter 16.16 - Critical Areas to adopt an updated Whatcom County Critical Areas Ordinance (CAO), as well as amend WCC Chapter 2.33 – Permit Review Procedures; Chapter 20.88 – Major Project Permits; and Chapter 20.92 – Hearing Examiner to clarify administrative authority and procedures for implementation, as well as provide internal regulatory consistency. The proposed amendments are intended to bring the CAO into compliance with the provisions of the Washington State Growth Management Act (GMA). Specifically the proposed amendments incorporate the use of Best Available Science (BAS), provide special consideration for anadromous fish, and clearly define the role of the County and the requirements for applicants proposing activity in critical areas and associated buffers during CAO review of development applications,

History: In response to concerns regarding rapid growth occurring in the State of Washington, the Washington State Legislature passed the Growth Management Act (RCW 36.70A) in 1990. The Washington State Growth Management Act (GMA) requires counties and cities to adopt comprehensive land use plans and development regulations to coordinate and manage growth and development, as well as protect the State's natural resources and critical areas. Under the provisions of the GMA, local jurisdictions must designate and adopt development regulations to manage and protect GMA critical areas, including: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas [RCW 36.70A.060]. Development activities within, or adjacent to these critical areas, are required to comply with the provisions of local critical areas ordinances.

To comply with the initial mandate of the 1990 GMA, Whatcom County adopted a Temporary Critical Areas Ordinance in June 1992. Following several years of development, study and public input, the Whatcom County Council adopted a permanent *Whatcom County Critical Areas Ordinance* (CAO), WCC Chapter 16.16, in October 1997.

Update Requirements:

Beginning in 2004, all counties and cities planning under the Growth Management Act are required to review and update their comprehensive plan and associated development regulations such as CAOs, as needed, every seven years to ensure continued compliance with

the provisions of the GMA [RCW 36.70A.130]. Deadlines to complete the first review and update of comprehensive plans and development regulations vary throughout the state. Whatcom County's deadline was December 1, 2004. The County anticipates adoption of an updated CAO in Spring of 2005.

To meet GMA specified review and update requirements, Whatcom County PDS has implemented the following general process for updating the Critical Areas Ordinance:

- Provide on-going opportunities for public, local jurisdictions, tribes, and agency involvement throughout the update and adoption process
- Develop a record of Best Available Science for use in designating, managing and protecting critical areas
- Evaluate and update existing policies and regulations
- Evaluate the classification and designation of critical areas
- Evaluate the development review process
- Review the CAO for consistency with other policy and regulatory documents
- Update critical area mapping and inventories by utilizing the best available information and resources

Public Involvement

Citizens Advisory Committee (CAC)

In May 2004, the Whatcom County Executive officially appointed a twelve (12) member Citizens Advisory Committee (CAC) specifically for the purpose of assisting Whatcom County Planning & Development Services (PDS) and their consultant team in reviewing and considering appropriate updates to the Whatcom County Critical Areas Ordinance (CAO) and Whatcom County Shoreline Management Program (SMP). To facilitate a fair and inclusive process, it was important that PDS and the consultant team work with a citizen-based advisory body that represented the many diverse interests and perspectives on resource management in the county. The purpose of the CAC has been to help focus discussions and identify key technical and policy issues that are important to the many stakeholder groups in the county.

The CAC membership represents the following stakeholder interests:

- Agricultural Industry
- Forestry Industry
- Development Industry (Building Industry Associated of Washington)
- Environmental Interests
- Key shoreline communities
- Cherry Point Industrial Community
- Citizen at Large

To date, there have been thirteen (13) meetings of the CAC between July and December 2004 to review and discuss the existing Whatcom County CAO, resource materials, DRAFT Best Available Science (BAS) Review and Recommendations, as well as Draft CAO updates. The CAC has reviewed and commented on all of the information presented in the Best Available Science Record, as well as the draft CAO amendments. Each CAC meeting has been open to the public and the times, locations, agendas, and meeting summaries have been posted on the Whatcom County PDS Natural Resource Management website (http://whatcomcounty.us/critical_areas). It should be noted that the CAC was provided multiple opportunities to review the draft CAO and submitted many substantive comments that were incorporated into the official public review draft.

Technical Advisory Committee (TAC)

In May 2004, the Whatcom County Executive officially approved the formation of a Technical and Policy Advisory Committee (TAC) to assist Whatcom County PDS in the review and update of the Whatcom County CAO and SMP. To facilitate a coordinated and science-based approach to natural resource management, it was important to formulate an intergovernmental/technical advisory group that represents the various interests of other agencies and governments in the county as they relate to Whatcom County natural resource management. The purpose of the TAC is to help focus technical discussions, identify and verify sources of best available science, and identify key technical and policy issues associated with natural resource management that are important and/or relevant in Whatcom County. Additionally, the TAC has provided an opportunity to draw upon agency/governmental technical and regulatory expertise, as well as an opportunity to add to the existing knowledge base in the county related to natural resource management.

The following governments and agencies have been invited to participate on the TAC:

- City of Bellingham
- Lummi Nation
- Nooksack Tribe
- Small Cities Caucus (Blaine, Lynden, Ferndale, Sumas, Everson, and Nooksack)
- Port of Bellingham
- Washington State Department of Fish and Wildlife
- Washington State Department of Natural Resources
- Washington State Department of Ecology
- U.S. Army Corps of Engineers
- Whatcom Conservation District/NRCS

In addition to regular participating governments and agencies, representatives from special districts within Whatcom County, such as the Watershed Improvement District, have also been invited for focused discussions related to their specific area of interest and expertise. Additionally, specific members from other parallel planning processes in the county, such as, WRIA Watershed Management Planning, Salmon Recovery, Lake Whatcom Management, and the Whatcom County Marine Resources Committee (MRC) have also participated in discussions with the advisory committee as appropriate.

To date there have been ten (10) meetings of the TAC between July and December 2004. The TAC has reviewed and commented on all of the information presented in the Best Available Science Record and, in many cases, has provided scientific studies and data to be included in the BAS review. The TAC has also reviewed and commented on the draft CAO amendments. The TAC meetings have also been open to the public and the meeting times, dates and locations have been posted on the events calendar of the Whatcom County Planning & Development Natural Resource Management website as they have been scheduled. Meeting agendas and summaries are also posted on the website. It should be noted that the TAC had multiple opportunities to review the draft CAO and submitted substantive comments that were incorporated into the official public review draft.

Public Workshops

Whatcom County PDS hosted CAO/SMP public workshops and expert panel discussions on September 30 and October 6, 2004. The workshops were held in Bellingham and Lynden respectively. The purpose of the initial workshops was to inform interested citizens of the intent, scope, and status of the CAO/SMP update processes, as well as obtain preliminary public comments and questions before drafting any proposed amendments to the CAO.

Additional public workshops were held in Bellingham and Lynden on February 15 and 16, 2005 to introduce and discuss important changes and additions presented in the February 4, 2005 draft Critical Areas Ordinance update. Public comments, questions and concerns received at these workshops were recorded and have been addressed in the subsequent draft CAO (Exhibit 1) as appropriate.

Additional public education and involvement opportunities have included the 2004 Birch Bay and Bellingham Marine Shoreline Stewardship Workshops, and the 2005 Whatcom County Home & Garden Show.

It is also important to note that Whatcom County staff has held meetings with and/or given special presentations to a number of stakeholders such as the Washington Dairy Federation, Washington Farm Bureau, Building Industry Association of Whatcom County, Nooksack Recovery Team (NRT), Whatcom County Association of Realtors, Marine Resources Committee, and the Environmental Community. Additionally, staff has met with the Whatcom County Agricultural Advisory Committee on a number of occasions to discuss provisions of the draft CAO as it relates to agricultural operations. A letter of support for agricultural provisions in the proposed CAO update from the Whatcom County Agricultural Advisory Committee is attached to this report (Appendix F).

Public Review Draft - Comment Period

The draft CAO was released for public review and comment on February 4, 2005. The public was invited to comment on the public review draft of the CAO and was provided a 30-day timeframe in which to submit comments and/or proposed changes. Following the close of the public comment period (March 4, 2005) county staff and the consultant team entered all of the comments received into a matrix and responded to each comment (Appendix B). Many of the comments submitted resulted in changes to the draft CAO.

Best Available Science (BAS)

A 1995 regulatory reform amendment to the Washington State Growth Management Act (GMA) requires that all counties and cities planning under the GMA include the use of best available science (BAS) to inform the development and implementation of critical area policies and regulations to protect the functions and values of critical areas [RCW 36.70A.172(1)]. In 2000, the State Office of Community Trade and Economic Development (CTED) adopted procedural criteria to implement these changes to the GMA and provided guidance for identifying and using BAS. The rule makers concluded that identifying and describing functions and values and estimating the types and likely magnitudes of adverse impacts to critical areas were scientific activities. Therefore, RCW 36.70A.172(1) and implementing regulations require the substantive inclusion of best available science in developing critical area policies and regulations.

In general, WAC 365-195-905 characterizes Best Available Science as current scientific information that has been derived from research, monitoring, inventories, surveys, modeling, assessments, synthesis, and expert opinion provided by qualified individuals that is:

- Logical and reasonable
- Based on quantitative analysis
- Peer reviewed
- Used in the appropriate context
- Based on accepted scientific methods
- Well referenced

In the absence of valid scientific information, local governments are directed to take a "precautionary or no risk approach" to the management of critical areas until such time that scientific information becomes available and can be incorporated into the regulations [WAC 365-195-920].

Pursuant to GMA best available science requirements, Whatcom County PDS has prepared a review and analysis of Best Available Science (BAS) pertinent to Whatcom County. The report was prepared by the county's consultant team lead by Parametrix in consultation with a Technical Advisory Committee and a Citizens Advisory Committee appointed by the County Executive. Meetings were held with each committee to discuss and comment on each section of the BAS report and the associated code recommendations. The report is attached herein as Appendix C.

Policy Integration

As a part of the update process Whatcom County PDS has developed an Integration Strategy to create consistency and eliminate unnecessary redundancy and gaps in environmental policies and regulations. The report incorporates review and discussion of existing local, state and federal planning efforts and requirements, as well as Administrator comments, in relation to the relevant goals, policies, and action items of the Whatcom County Comprehensive Plan. The report includes a set of formal recommendations to address identified policy issues that were used by the county's consultant team to help guide the development of the draft CAO update. These recommendations may also be considered as other plans and programs are updated in the future.

II. ANALYSIS OF THE PROPOSED AMENDMENT

The factors that are to be considered in evaluating a proposed amendment are set forth in WCC 20.90.060, and RCW 36.70. These factors are addressed below.

A. Whether the proposed amendment conforms to the requirements of the GMA, is internally consistent with the Comprehensive Plan, is consistent with the County-Wide Planning Policies, and is consistent with any interlocal planning agreements.

Washington State Growth Management Act (GMA)

The proposed amendments are generally consistent with and will implement the following GMA Planning Goals, at RCW 36.70A.020:

- (7) *Permits.* Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- (8) *Natural resource industries.* Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- (9) *Open space and recreation.* Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands, water and develop parks and recreation facilities.

- (10) *Environment.* Protect the environment and enhance the state's high quality of life, including air and water quality and the availability of water.
- (11) *Citizen participation and coordination.* Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- (14) *Shoreline management.* The goals and policies of the shoreline management act as set forth in RCW 90.58.020.

GMA Requirements for Critical Areas Ordinance Updates

In accordance with RCW 36.70A.060, each county and city is required to adopt development regulations to protect critical areas (i.e., wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas) that are designated per RCW 36.70A.170. Pursuant to RCW 36.70A.130, every county and city planning under the Growth Management Act is required to continually review and evaluate its adopted comprehensive land use plan and associated development regulations, including critical areas regulations. As noted previously, beginning in 2004, Whatcom County must take legislative action to review and update its comprehensive plan and development regulations, as needed, every seven years to ensure continued compliance with the provisions of the GMA.

Since the initial enactment of the Washington State Growth Management Act in 1990, the State Legislature has adopted several amendments to the Act. The following State mandates reflect changes that must be addressed when updating the CAO to comply with the GMA:

- Must include Best Available Science to designate and protect critical area functions and values [RCW 36.70A.172]
- Must give special consideration to preservation and enhancement of anadromous fisheries [RCW 36.70A.172]
- Wetlands must be delineated according to the Washington State Department of Ecology Manual [RCW 36.70A.175]

The proposed amendments presented in Exhibit 1 of this report, as well as additional information developed in association with the CAO update, including the Whatcom County BAS Record (Appendix C), have been developed in accordance with the goals and requirements of the GMA, as well as the specific provisions of the above referenced mandates. Therefore, staff has determined that the proposed amendments substantially conform to overall the requirements of the Growth Management Act.

Whatcom County Comprehensive Plan

As previously stated, the purpose of the proposed update is to ensure consistency between the GMA and the Whatcom County Comprehensive Plan. Pursuant to RCW 36.70A.130(1)(b), any amendments or revisions made to a comprehensive plan must be consistent with the GMA and any amendments or revisions to associated development regulations must be consistent with and implement the locally adopted comprehensive plan.

In 2001, Whatcom County adopted amendments to numerous chapters of the Whatcom County Comprehensive Plan, including Chapter 11 – Environment, to strengthen goals, policies and

action items relating to protection of threatened and endangered species under the Endangered Species Act (ESA). The adopted updates included amendments related to maintenance and encouraging restoration of habitat functions for threatened and endangered species and giving special consideration to conservation or preservation of anadromous fisheries.

In 2004, Whatcom County conducted further review and update of the Whatcom County Comprehensive Plan as part of the GMA-required seven-year comprehensive plan review and evaluation to ensure continued compliance with the GMA. Additional updates to the Environment chapter included policy and action item amendments related to use of Best Available Science (BAS), as well as development of a system to classify wetlands and assign buffers that follow State guidelines. The amendments also included Policy 11G-10 which specifies that the County must develop and administer regulations and incentives such that there is no net loss of ecological function and values of wetlands and fish and wildlife habitats.

In accordance with staff's review of the proposed update it is concluded that, as amended, the updated CAO is consistent with and implements the applicable Comprehensive Plan goals, policies and action items. A list of *Whatcom County Comprehensive Plan* goals, policies and action items relevant to the proposed amendments are attached herein as Appendix A.

It is also important to note that an Integration Strategy (Appendix D) was developed to help guide the update process and address gaps, conflicts and inconsistencies among the various natural resources policies and regulations at work in Whatcom County. The Integration Strategy includes a comprehensive review of the relevant natural resource policies contained in various plans and regulatory mechanisms and includes recommendations that were utilized by PDS staff and the consultant team in the development of the CAO update to ensure consistency between the CAO and other policy and regulatory documents including the Comprehensive Plan.

Whatcom County County-Wide Planning Policies

The proposed amendments and the public involvement process conducted in association with the CAO update implement and are consistent with the following County-Wide Planning Policies:

A. Citizen Involvement

1. The county and the cities shall cooperate to provide public education on the requirements of the Growth Management Act.
2. The county and the cities shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees. The method of citizen involvement may vary based on the needs and constituents in various communities and shall include representation of both rural and urban interests on those issues that affect both urban and rural areas.
3. Citizens shall be notified in a timely manner of opportunities to have input and key decision points in the planning process. This should include actions such as use of telephone hotlines, notification to interest groups, pre-development meetings, early incorporation of public comments and broader notification of property owners and residents during a planning process as well as working more extensively with community

and neighborhood groups. The cities shall also develop a public participation process to solicit and incorporate comments from residents outside city limits but within proposed Urban Growth Areas.

4. Citizen comments and viewpoints shall be incorporated into the decision-making process in development of draft plans and regulations. Consideration of citizen comments shall be evident in the decision-making process.

H. Open Space/Greenbelt Corridors

4. The County and Cities should work cooperatively to protect and restore stream corridors within Urban Growth Areas that support anadromous fish.

M. Intergovernmental Cooperation

1. To adequately plan for growth and implement the policies of the Growth Management Act, the governmental jurisdictions in Whatcom County, including the Lummi Nation and Nooksack Tribe, and the Port of Bellingham shall work together to establish on-going mechanisms to improve communication, information sharing and coordinated approaches to common problems.

N. Water Quality and Quantity

1. The cities, and the county, in cooperation with other municipal corporations, tribal governments, federal and state agencies, and public and private utilities shall cooperate in the protection of water resources and in drawing upon said water to support growth.
2. The Cities and the County in cooperation with other municipal corporations and tribal governments, shall adopt zoning regulations and development standards to protect water resources. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.
3. Jurisdictions shall cooperate to protect and restore water resources and fish habitat within UGA's and across jurisdictional boundaries to maintain quality of life and economic health in Whatcom County.

The proposed amendments are also intended to further integrate and coordinate the CAO with other local, state and federal environmental resource policies and regulations, including the County-wide Planning Policies. As described previously, the CAO update process has provided multiple avenues and opportunities for public and intergovernmental input, cooperation and coordination to identify and address key natural resource management policy issues that are important in Whatcom County. Therefore, staff has concluded that the proposed amendments are also consistent with, and implement, the County-wide Planning Policies.

B. That further studies made or accepted by the department of planning and development services and planning commission indicate a need for the amendment or that changed conditions indicate a need for the amendment.

As noted earlier, a *Whatcom County Critical Areas Ordinance Update Best Available Science Report* (Appendix C) has been developed in association with the proposed CAO update and

includes a synthesis of scientific information that has been used as a basis for specific recommendations for updating the CAO. The information in the report provides a basis for recommended changes (e.g., buffering and CARA classification) and additions (e.g., volcanic, tsunami/seiche, and erosion hazard areas) to the CAO. In some instances, the BAS report supports existing provisions of the County code.

Additional State information and guidance materials have also been incorporated into the Whatcom County CAO update and include, but are not limited to, the *Washington State Wetland Rating System for Western Washington* (DOE, August 2004); *DRAFT – Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands* (DOE, August 2004); *Critical Areas Assistance Handbook* (CTED, November 2003); as well as CTED Best Available Science guidance, technical bulletins, and recommended BAS sources.

C. That the public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

- ❑ **The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.**

The updated January 2005 Whatcom County Comprehensive Plan adopted population numbers that project an increase of approximately 70,000 people, or 41% growth, in Whatcom County by the year 2022. As Whatcom County's population increases, associated development activities including construction, impervious surfaces, vegetation removal, fill activities, etc. will continue to create greater challenges for the preservation and protection of environmental resources within Whatcom County's jurisdiction. Growth pressures and development activities along or within natural resource areas can stress natural systems and create significant shifts in ecosystem conditions. Without appropriate planning and management, land use activities can create adverse impacts that may threaten both environmental resources and the public welfare.

Though specific land use impacts vary depending on the type of development and the type of resource affected, they may generally include:

- Surface and ground water pollution
- Erosion and sedimentation
- Habitat loss/fragmentation
- Flooding
- Loss of property

It is also important to note that developments can also be adversely impacted and can expose occupants to risk from the surrounding environment when not planned, designed and sited appropriately with due consideration to natural hazards (e.g. flooding, landslides and erosion).

The *Critical Areas Assistance Handbook* developed by the Washington State Office of Community Trade and Economic Development (CTED), specifies that development regulations must protect critical areas and ensure "no net loss of the structure, value and functions of the natural systems constituting the protected critical areas". Though multiple approaches to local critical area protection may be appropriate, including regulatory and non-regulatory mechanisms, CTED clarifies that counties and cities should, at a minimum, prepare development regulations that govern changes in land uses and new activities by allowing,

restricting, conditioning, or prohibiting activities as appropriate. Such regulations should be consistent with and implement the objectives of the Comprehensive Plan.

The proposed CAO regulations generally include provisions for:

- buffers from certain critical areas with limitations on alterations permitted in the buffers;
- buffer and use restrictions to protect critical areas from potential impacts from development;
- mitigation requirements for activities that impact or alter critical areas; and
- provisions to protect hazard areas from alterations which could create or increase risk of hazard

However, the proposed amendments are not applicable to existing legally nonconforming land uses unless there is a change in use or a new development activity is proposed.

- **The anticipated effect upon the ability of County and/or other service providers, as applicable, to provide adequate services and public facilities including transportation facilities.**

It is not anticipated that the proposed amendments to WCC, Title 2, Title 16 and Title 20 will have an adverse impact upon the ability of County and/or other service providers to provide adequate public facilities within Whatcom County. In fact one of the primary purposes outlined in the draft CAO is to allow for adequate and appropriate public services and facilities [16.16.100(B)].

- **Anticipated effect upon critical areas.**

It is not anticipated that the proposed amendments to the CAO will have an adverse affect upon critical areas. The intent of the proposed amendments is to protect critical area functions and values in accordance with RCW 36.70A.172. The following is a summary of the proposed changes and additions to the CAO (Exhibit 1) and WCC Title 2 and Title 20 (Exhibit 2):

Critical Areas Ordinance

Administration

Improvements and changes to the administration of the Critical Areas Ordinance include:

- More effective process and criteria for Reasonable Use exceptions
- Special provisions for agriculture (CPAL) - farm plan requirements have been updated based on new information
- Expedited review process for single family developments in many cases
- Clear process for dispute resolution
- More detailed standards to improve consistency and predictability
- Built-in flexibility. Process and standards are tiered to fit potential development impacts
- Clear emphasis on impact avoidance, the first step in protecting critical areas
- More detail for technical analyses to ensure sound decision making and predictability
- Recognition of watershed processes

Geologically Hazardous Areas

Improvements and changes to Geologically Hazardous Areas section include:

- Added provisions to address tsunami, volcanic, and seiche hazard areas as required by GMA
- Restricts human occupied developments on alluvial fans until detailed studies are available to assess and mitigate life-safety risks
- Regulates development within 300 ft of active landslide hazards to ensure slope stability and protect downslope and upslope property owners
- No new structures in channel migration zones, *where maps have been adopted* to address avulsion hazards protect ecological functions including salmonid species
- Critical facilities still prohibited in all hazard areas including tsunami, volcanic, and seiche hazard areas
- Clearer geotechnical report requirements for new developments

Frequently Flooded Areas

Improvements and Frequently Flooded Areas section include:

- Provides for protection of floodplain ecology along with flood hazard management
- Can require mitigation for floodplain impacts consistent with health and safety standards
- Clarifies roles and responsibilities between County departments

Critical Aquifer Recharge Areas

Designation and classification of a CARA in the draft code is based on one of the following:

- Meeting criteria for hydrogeologic characteristics established by the Washington State Department of Ecology. These criteria are also used to classify the susceptibility of the CARA to water quality and quantity threats as low, moderate, or high.
- The area around a wellhead defined by the boundary of the 10 year time of ground water travel. High, moderate, and low susceptibility classification is assigned to the 1 year, 5 year, and 10 year time of ground water travel respectively.
- Special groundwater management areas, or susceptible groundwater management areas established in accordance with WAC 173-200-090 or WAC 173-100-010 will be classified as highly susceptible.
- Replaces generic reliance on SEPA review process with clearer requirements for certain types of new developments that have a potential to adversely affect groundwater resources
- Improved CARA mapping to facilitate project review and screening

Wetlands

Improvements and changes to the Wetlands section include:

Categories: Wetland categories are assigned based on the Western Washington Wetland Rating System.

- Category I wetlands are of exceptional value in terms of protecting water quality, storing flood and storm water, and/or providing habitat for. These are wetland communities of infrequent occurrence that often provide documented habitat for sensitive, threatened or endangered species, and/or have other attributes that are very difficult or impossible to replace if altered.
- Category II wetlands have significant value based on their function. They do not meet the criteria for Category I rating but occur infrequently and have qualities that are difficult to replace if altered.
- Category III wetlands have important resource value. They occur commonly in Whatcom County.
- Category IV wetlands are of limited resource value. They typically have vegetation of similar age and class, lack of special habitat features, and/or are isolated or disconnected from other aquatic systems or high quality upland habitats.

Buffers: Standard buffer width is based on the following factors:

- Wetland category: category I wetlands have the largest buffers.
- Habitat function score: high quality habitat is valuable and protected with a larger buffer.
- Land use intensity: wetlands adjacent to high intensity land use require larger buffers for protection.

The range of standard buffers for each wetland category:

- I: 50-300 feet
- II: 50-275 feet
- III: 50-150 feet
- IV: 25-50 feet

Standard buffers may be averaged, reduced or increased based on site-specific factors at the discretion of the Technical Administrator, and with certain minimum widths.

Fish and Wildlife Habitat Conservation Areas

Improvements and changes to the Fish and Wildlife Habitat Conservation Areas section include:

- Distinguishes listed, priority, and locally important species
- Regulates development in and adjacent to streams and other important habitats
- Contains new standards for culverts, storm water facilities, bank and shore protection, etc.
- Beaches are designated as locally important habitats along with Chuckanut corridor

Buffers: Streams

- Shoreline streams – 150 feet
- Other fish bearing stream – 100 feet
- Non-fish bearing streams – 50 feet

Marine shorelines – 150 feet
Other habitats – on a case-by-case basis

Whatcom County Code, Chapter 2.33 – Permit Review Procedures and Title 20 – Zoning Ordinance

As stated previously in the request summary, the proposed amendments to WCC Title 2 and Title 20 (Exhibit 2) are intended to clarify administrative authority and procedures for CAO implementation, establish a more effective CAO review process, as well as provide internal regulatory consistency. The subject amendments provide:

- A 30-day public notice requirement and 30-day public comment period for mitigation bank proposals (Chapter 2.33 WCC).
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- A discretionary permit review process for mitigation bank proposals through the major project permit process (Chapter 20.88 WCC).
- Authorization for County Council approval of alternative mitigation plans for major project permits or watershed-based management plans (Chapter 20.88 WCC).
- Authorization for the Hearing Examiner to conduct open record hearings and make final decisions on applications for reasonable use or variance from the terms of the CAO (Chapter 20.8
- “Mitigation banks” as a major development project use within all zone districts of WCC Title 20.

Critical Areas Maps

The Whatcom County critical areas maps have been updated using State and Federal data and have been reviewed by the CAC and TAC. However, please note that the updated critical area maps (Appendix E) are intended only to be used as a guidance document for the administration of the CAO and are not proposed to be formally adopted by ordinance as they require frequent update as additional information becomes available. As indicated in 16.16.200 of the draft CAO property owners, the Technical Administrator, and/or members of the public may use these maps as a general guide, but the maps do not provide a comprehensive accounting of areas subject to this chapter nor do they provide a definitive critical area designation. In many instances field investigation, analysis by a qualified professional, and/or other consideration of other sources of credible scientific information may be required to confirm the presence or absence of a critical area and its boundaries and buffers. In addition, pursuant to 16.16.255G of the draft CAO, critical areas reports and delineations will be required to be submitted in a digital format to be incorporated with and improve critical areas mapping within the County. It is expected that this process will lead to improved administration and help resolve mapping discrepancies.

- **Anticipated effect upon designated agricultural, forest and mineral resource lands.**

The GMA, at RCW 36.70A.170, requires designation and protection of natural resource lands of long-term commercial significance (i.e., agricultural, forest, mineral), as well as critical areas. The Whatcom County Comprehensive Plan, at Chapter 8 – Resource Lands and Chapter 11 – Environment, also includes goals, policies and action items that support protection of important county natural resource lands and protection of the county’s environmental resources.

In recognition of both management objectives under the GMA and the comprehensive plan, the proposed CAO amendments have been drafted in consultation with the CAC, TAC, and other stakeholder groups representing environmental and natural resource interests. As a result, it is anticipated that the proposed CAO updates will facilitate a balanced management program that provides for both sustainability of long-term natural resource production, as well as protection of critical area functions and values.

Agriculture

The proposed Critical Areas Ordinance amendments continue to permit ongoing agriculture activities within critical areas and/or their associated buffers when conducted in accordance with the standards of the CAO or conducted pursuant to a farm plan developed and approved under the provisions of the Conservation Program on Agriculture Lands (CPAL). The intent of CPAL is to limit the economic impact of the critical area regulations on agricultural activities in Whatcom County while providing for an equivalent protection of critical areas. The program allows farmers to develop a plan that incorporates best management practices as an alternative to strict compliance with the regulatory standards of the CAO. This program allows farmers to specifically tailor their agriculture practices to minimize impacts to critical areas while continuing to engage in farming activities. The updated CPAL provisions provide clearer direction and clarify the roles and responsibilities between applicants, the Conservation District, consultants and County staff. The proposed updates also allow for better oversight and adaptive management of the farm plan program.

Forestry

Pursuant to Exhibit 1, Section 16.16.230, the proposed amendments do not apply to Forest Practices governed by a valid Forest Practices Permit including Class I, II, III, and IV Special forest practices permits granted by the Washington State Department of Natural Resources. Such activities are specifically exempted. Therefore, it is not anticipated that the proposed amendments will have an affect on forest lands that have long-term significance for the commercial production of timber that have been designated by Whatcom County per RCW 36.70A.170(b).

Lands that have been, or are proposed to be, converted to a use other than commercial forest production under an approved Conversion Option Harvest Plan (COHP), or forest practices on lands which have been platted after January 1, 1960 as provided in Chapter 76.09 RCW, are not exempt activities and will be subject to the standards of the Whatcom County CAO.

Mineral Resource Lands (MRLs)

The proposed amendments, at Exhibit 1, Section 16.16.525F, allow metals and hard rock mining, as well as new sand and gravel mining to be permitted within critical aquifer recharge areas provided that such activities are located within areas subject to the provisions of WCC, Chapter 20.73 – *Mineral Resource Lands Special District* (MRL), and further provided that they are located outside of the 10-year time of travel for wellhead protection areas. Areas subject to the provisions of WCC 20.73 have been designated as mineral resource lands of long-term commercial significance under the Whatcom County Comprehensive Plan per RCW 36.70A.170(c). Therefore, it is not anticipated that the proposed amendments will have an adverse affect on designated mineral resource lands in Whatcom County.

- ❑ **Other anticipated effects on the Comprehensive Plan, its policies and objectives that in the opinion of the Planning Department warrant consideration by the Planning Commission.**

Planning and Development Services staff has not identified any additional factors related to the proposed amendments that have not already been addressed in this report or any exhibits attached hereto which warrant further consideration by the Planning Commission.

D. The amendment must bear a substantial relationship to the public health, safety, morals, or welfare.

In framing the GMA, the State Legislature found that “a lack of common goals expressing the public’s interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state” [RCW 36.70A.010]. The Whatcom County Comprehensive Plan further states that “each person in Whatcom County has a fundamental right to a healthful and safe environment in which to live and grow” and “with this right comes a responsibility to contribute to the protection and enhancement of our natural environment” (WCCP, p. 11-1).

The proposed amendments to the Whatcom County CAO are intended, among other things, to:

- safeguard and minimize potential impacts to essential water resources, including drinking water;
- preserve and protect important fish and wildlife habitat areas;
- minimize unnecessary maintenance and costs associated with development within critical areas;
- reduce risks and exposure associated with known geologic and flood hazard areas;
- clarify and coordinate critical area permit review procedures to avoid duplication or delays;
- protect the beneficial functions and values of critical areas;
- protect private property rights and allow for reasonable use of property; and
- maintain continued compliance with the provisions of the GMA.

Each of these overall objectives are considered to be within the scope of preserving the public health, safety, and welfare of the citizens of Whatcom County.

III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. The Washington State Legislature passed the Washington State Growth Management Act (GMA) in 1990 and amended it in 1991, requiring counties and cities to define, identify, and manage regulated critical areas.
2. Whatcom County adopted a Temporary Critical Areas Ordinance in June 1992 and a permanent *Whatcom County Critical Areas Ordinance* in October 1997 [ORD No. 97-056].
3. Pursuant to RCW 36.70A.130(4), Whatcom County is required to take action to review and revised their comprehensive plans and development regulations every seven years, if needed, to ensure continued compliance with the provisions of the Growth Management Act (GMA).
4. The GMA, at RCW 36.70A.130(4)(a), requires Whatcom County to complete review and evaluation of the *Whatcom County Comprehensive Plan* and implementing development regulations on or before December 1, 2004.

5. The Whatcom County Comprehensive Plan projects an increase of approximately 70,000 people, or 41% growth, in Whatcom County by the year 2022. As Whatcom County's population increases, associated development activities will continue to create greater challenges for the preservation and protection of Whatcom County's environmental resources. Without appropriate planning and management, land use activities can create potential impacts that may threaten both environmental resources and the public welfare.
6. Pursuant to RCW 36.70A.172, Whatcom County shall include the Best Available Science (BAS) in developing policies and development regulations to protect the functions and values of critical areas.
7. Comprehensive Plan Policy 11K-2 states that Whatcom County must develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines.
8. The Whatcom County *Best Available Science Record* has been prepared by the county's consultant team lead by Parametrix in consultation with a Technical Advisory Committee and a Citizens Advisory Committee appointed by the County Executive. The information in the BAS report provides a scientific basis for the proposed CAO updates and, in some instances, supports existing provisions of the County code.
9. Pursuant to RCW 36.70A.172, special consideration must be given to the preservation and enhancement of anadromous fisheries. In accordance with this provision, Whatcom County has given "special consideration" to conservation and protection measures necessary to preserve or enhance anadromous fisheries through the CAO update process.
10. Whatcom County Comprehensive Plan, Chapter 11, Action Plan Item 58, states that Whatcom County must "amend the Critical Areas Ordinance to protect threatened and endangered species, consistent with RCW 36.70A.172, which calls for giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, and Department of Ecology rules relating to Best Available Science (WAC 365-195, Part IX)".
11. Pursuant to RCW 36.70A.175, regulated wetlands shall be delineated in accordance with the *Washington State Wetlands Identification and Delineation Manual*, (Ecology Publication 96-94).
12. Pursuant to Whatcom County Comprehensive Plan Policy 11G-10, Whatcom County must develop and administer regulations and incentives such that there is no net loss of ecological functions and values of wetlands and fish and wildlife habitats.
13. The 2003 *Critical Areas Assistance Handbook* published by the Washington State Office of Community Trade and Economic Development (CTED) specifies that there must be "no net loss of structure, value and function of natural systems constituting critical areas."
14. A Citizens Advisory Committee (CAC) has been officially formed for the specific purpose of assisting Whatcom County Planning & Development Services (PDS) in reviewing and updating the *Whatcom County Critical Areas Ordinance* (CAO) and the *Whatcom County*

- Shoreline Management Program (SMP)*. The purpose of the CAC has been to help focus discussions and identify key technical and policy issues that are important to the many diverse interests and perspectives of stakeholder groups in the county.
15. The CAC conducted thirteen open public meetings in 2004 to review and comment on existing critical area regulations, scientific resource materials, the DRAFT Best Available Science Record for Whatcom County, and DRAFT updates to the Whatcom County Critical Areas Ordinance.
 16. An official Technical Advisory Committee (TAC) consisting of government and agency representatives was formed for the specific purpose of assisting Whatcom County PDS in the review and update of the Whatcom County CAO and SMP. The purpose of the TAC has been to help focus technical discussions, identify and verify sources of best available science, and identify key technical and policy issues that are important to the many agencies and governments in Whatcom County.
 17. The TAC conducted ten open public meetings in 2004 to review and comment on information presented in the Whatcom County Critical Areas Ordinance Update Best Available Science Record and the draft CAO amendments. The TAC has provided agency/governmental technical and regulatory expertise and has added to the existing knowledge base in the county by contributing scientific information to the Whatcom County BAS review.
 18. Whatcom County PDS hosted CAO/SMP public workshops and expert panel discussions on September 30 and October 6, 2004 to inform interested citizens of the intent, scope, and status of the CAO/SMP update processes, as well as obtain preliminary public comments and questions.
 19. The public was invited to comment on the February 4, 2005 public review draft of the CAO and was provided a 30-day timeframe in which to submit comments and/or proposed changes.
 20. Public workshops were held on February 15 and 16, 2005 to introduce and discuss important changes and additions presented in the February 4, 2005 draft Critical Areas Ordinance. Public comments, questions and concerns received at these workshops were recorded and addressed in the subsequent draft CAO as appropriate.
 21. Additional public education and involvement opportunities included the 2004 Birch Bay and Bellingham Marine Shoreline Stewardship Workshops, and the 2005 Whatcom County Home & Garden Show.
 22. Whatcom County staff held meetings with and/or gave presentations to several stakeholder groups, including the Washington Dairy Federation, Washington Farm Bureau, Building Industry Association of Whatcom County, Nooksack Recovery Team (NRT), Whatcom County Association of Realtors, Marine Resources Committee, Whatcom County Agriculture Advisory Committee, and the Environmental Community.
 23. A letter of support for agricultural provisions in the proposed CAO update was provided from the Whatcom County Agricultural Advisory Committee (Appendix F).

24. The Whatcom County SEPA Official issued a determination of non-significance under the State Environmental Policy Act on the proposed *Whatcom County Critical Areas Ordinance* update on February 22, 2005.
25. Pursuant to RCW 36.70.590, legal notice for a Planning Commission public hearing was published in the Bellingham Herald on March 14, 2005.
26. The Whatcom County Planning Commission held a public hearing on March 24, 2005 and all testimony was considered.

IV. PROPOSED CONCLUSIONS

1. The proposed amendments to WCC Chapter 16.16 – *Critical Areas*, attached as Exhibit 1, are generally consistent with and implement the goals, policies, and requirements of the Washington State Growth Management Act, Whatcom County Comprehensive Plan, and County-wide Planning Policies.
2. The proposed amendments to WCC Chapter 2.33 - *Permit Review Procedures*; Chapter 20.88 – *Major Project Permits*; and Chapter 20.92 – *Hearing Examiner*, attached as Exhibit 2, are necessary to clarify administrative authority and procedures for CAO implementation, as well as provide internal regulatory consistency.
3. The Chuckanut Corridor map, attached as Exhibit 3, is necessary to officially recognize the last remaining wildlife corridor area in the Puget Trough where natural land cover extends from marine waters to the National Forest Boundary east of Chuckanut Mountain which has been identified as such through an eco-regional assessment prepared by the Washington State Department of Fish and Wildlife.
4. The proposed amendments updating the official *Whatcom County Critical Areas Ordinance* are necessary to maintain continued compliance under the Growth Management Act (GMA).
5. The proposed amendments contribute to the preservation of the public health, safety, and welfare of the citizens of Whatcom County.

V. RECOMMENDATION

Based upon the above findings of fact and conclusions, Whatcom County Planning & Development Services recommends approval of the proposed Whatcom County Code amendments attached as Exhibits 1 and 2 and the proposed Chuckanut Corridor map attached as Exhibit 3.

VI. EXHIBITS

- EXHIBIT 1:** Proposed Whatcom County Critical Areas Ordinance
EXHIBIT 2: Proposed amendments to WCC, Title 2, Chapter 2.33; and Title 20, Chapters 20.88, and 20.92
EXHIBIT 3: Chuckanut Corridor Map

VII. APPENDICES

- APPENDIX A:** Whatcom County Comprehensive Plan goals, policies and action items related to the proposed amendments
- APPENDIX B:** Draft Critical Areas Ordinance update public comment matrix
- APPENDIX C:** Whatcom County Critical Areas Ordinance Best Available Science Record
- APPENDIX D:** Environmental Policy Integration: Recommendations Report
- APPENDIX E:** Draft Critical Areas Maps
- APPENDIX F:** Letter from Whatcom County Agricultural Advisory Committee

Whatcom County Comprehensive Plan Goals, Policies and Action Items related to the proposed Whatcom County Critical Areas Ordinance Update

Chapter 2 – Land Use

Policy 2D-2: Eliminate regulations that could be more effectively achieved through incentive or education programs.

Policy 2D-3: Streamline development regulations to eliminate unnecessary time delays.

Policy 2D-4: Coordinate permitting requirements among jurisdictions to minimize duplication and delays.

Goal 2K: Discourage development in areas prone to flooding.

Policy 2K-1: Limit lands in one-hundred year floodplains to low-intensity land uses such as open space corridors or agriculture.

Policy 2K-2: Use the Comprehensive Flood Hazard Management Plan as a basis to balance land use and flooding.

Policy 2K-4: Encourage multi-purpose problem solving relative to flooding, aquifer recharge, improved water quality, water for human consumption, and fish habitat. Consider the purchase of land along the Nooksack River for flood water storage that could be utilized by cities and water providers.

Goal 2M: Protect and encourage restoration of habitat for fish and wildlife populations.

Policy 2M-1: Ensure that new land uses do not degrade habitat of threatened and endangered species.

Policy 2M-2: Ensure that existing land uses do not cause further degradation of habitat for threatened and endangered species.

Policy 2M-3: Develop educational tools and incentives to encourage existing land uses to restore degraded habitat to properly functioning conditions, especially for threatened and endangered species.

Policy 2M-4: Place a note on all permits issued by the County for clearing or development within ¼ mile of the documented habitat of threatened or endangered species as shown on the county fish Distribution Map, alerting the property owner to the presence of these species.

Policy 2M-5: Require subdivisions and short plats to be designated in a manner to protect fish habitat and water quality when a fish bearing stream or river passes through the site.

Policy 2P-2: Consider natural limitations on the development capacity of land, such as critical aquifer recharge areas or floodplains, and other characteristics unique to each city, such as seasonal population or adjacent county urban zoning, in designating urban growth areas and densities.

Policy 2DD-9: Conserve open space, park land, and green links for recreational use, as well as to protect essential habitat such as riparian areas and wetlands.

Goal 2SS: Conserve or enhance important natural, cultural, and scenic resources.

Policy 2SS-1: Protect and encourage voluntary restoration of streams, stream corridors, wetlands, natural shorelines, fish habitat and aquifers through education and incentive programs. For willing landowners, purchase property or acquire easements for riparian

and channel migration zone areas to protect habitat for threatened and endangered species.

Goal 2TT: Identify and protect open space corridors within and between urban growth areas. These corridors should include trails and other lands useful for recreation, while emphasizing wildlife habitat, and connection of critical areas, where feasible.

Policy 2TT-1: Identify marine, riverine, and other riparian corridors as essential elements of open space corridors.

Policy 2TT-3: Identify tidelands and floodplains as essential elements of open space corridors.

Policy 2TT-4: Identify estuaries, lakes, and rivers as naturally occurring open space corridors.

Policy 2VV-3: Support the conservation of fish and wildlife habitat through enrollment in Whatcom County's open space taxation program.

Policy 2VV-6: Improve public access to shorelines and other lands using such mechanisms as purchase or transfer of development rights, density bonuses within UGAs, and open space tax status.

Policy 2VV-9: Support the conservation of unique environmental features through the creative use of cluster subdivisions.

Policy 2VV-10: Support the incorporation of stream greenbelts into subdivision design as common open space.

Chapter 5 - Utilities

Policy 5N-6: Restrict the location of transmission pipelines in high-risk landslide areas where evidence of instability could be ascertained by recent events, or verifiable geological conditions.

Chapter 6 – Transportation

Policy 6E-1: Promote designs to preserve mature trees, unique wildlife habitats, water quality and other elements of the natural environment, including environmentally sensitive areas and shorelines, during the design and construction of road improvement projects.

Policy 6E-3: Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, shallow, grassed street swales instead of curbs and gutters and, where feasible, encouraging alternate surfacing options.

Policy 6E-4: Engineer, construct, and maintain road improvements to control pollutants affecting water quality and reduce run-off entering surface or groundwater consistent with water quality standards.

Chapter 8 – Resource Lands

Policy 8A-7: Establish flexibility in land use plans and regulations to encourage maintenance of the productive agricultural land base.

Policy 8B-5: Support improving the efficiency and flexibility of state and local environmental regulations affecting the agricultural products industry.

Policy 8B-6: Develop a range of non-regulatory programs, options, and incentives which agricultural landowners can employ to meet or exceed county environmental goals.

Goal 8E: Encourage agricultural land uses to voluntarily protect and restore habitat of threatened and endangered species through education and incentive programs.

Policy 8E-1 & 8I-1: Ensure that adequate riparian buffers are maintained along rivers and streams.

Policy 8E-2: Encourage fencing along rivers and streams to prevent livestock from degrading riparian and instream habitat.

Policy 8E-4: Encourage proper storage and application of manure.

Policy 8E-5: Encourage voluntary restoration to properly functioning habitat conditions for those riparian areas and stream reaches that do not currently provide such habitat conditions.

Policy 8E-6: Encourage the maintenance and operation of drainage systems such that the habitat impacts from such systems are minimized and agricultural uses remain viable.

Goal 8I: Ensure that forest practices avoid adverse impacts to the habitat of threatened and endangered fish and wildlife species and to marine waters that support shellfish resources.

Policy 8I-3: Ensure that riparian and stream functions are protected when forestlands are converted to non-forestry uses.

Policy 8K-3: Avoid adversely impacting water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using uncontaminated material for reclamation or on-site storage.

Policy 8Q-7: Work with state and federal agencies to develop policies and regulations regarding in-stream gravel extraction to ensure that spawning or critical habitat is not adversely impacted and that flooding or erosion in surrounding areas is not increased.

Action Item 18. Make it advantageous to land developers and landowners to dedicate land for public use.

Action Item 21. Prime open space, and river corridors and natural areas should be designated and prioritized for future acquisition. River corridors will be evaluated for increased wetland/water storage areas for flood mitigation and fish and wildlife habitat and potential secondary use for reservoirs as park and open space attractions.

Chapter 9 – Recreation

Goal 9E: Recognize the shoreline as one of Whatcom County's unique assets and provide adequate physical and visual access for present and future generations.

Chapter 11 - Environment

Policy 11A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

Policy 11A-3: Continue to identify and designate Environmentally Critical Areas and other important environmental features.

Policy 11A-7: Support efforts to educate and inform the public as to the benefits of healthy and viable environment, their ecologically fragile areas, and their economic and social value.

Policy 11A-9: Cooperate with state and federal agencies and neighboring jurisdictions to identify and protect threatened and endangered fish and wildlife species and their habitats.

- Policy 11A-10:* Support acquisition, conservation easements, open space, and other such programs to protect high-value natural areas as identified through the GMA planning process, the Natural Heritage Plan, the state Priority Habitats and Species (PHS) program, the Lake Whatcom Management Program, and other sources.
- Policy 11A-12:* Broadly inform the citizens of the county of the locations of potential development constraints associated with natural conditions. Information should include known natural hazards, and an assessment of the potential danger to both the property owner and the public.
- Goal 11B:* Ease the burden of excessive and confusing regulations, in instances when they are clearly identified, relating to the identification, delineation, and protection of environmental features.
- Policy 11B-1:* Develop, as a primary component of a comprehensive environmental management program, non-regulatory measures that include voluntary activity, education, incentives, restoration, acquisition, mitigation, and intergovernmental coordination.
- Policy 11B-3:* Support education as an important tool in developing public appreciation for the value of natural systems and provide the public with informational materials and presentations relating to the natural system functions, regulations, and issues.
- Policy 11B-5:* Process the environmental review of building and development applications within an established time frame that is predictable and expeditious.
- Policy 11B-6:* Provide clear, timely, appropriate and understandable direction to citizens, developers, and property owners.
- Policy 11B-7:* Simplify regulations and establish effective inspection, compliance and enforcement measures.
- Goal 11C:* In implementing Whatcom County environmental policies, provide for protection of private property rights, economic opportunities and plan appropriately for growth.
- Policy 11C-1:* Actively pursue voluntary and cooperative efforts that advance Whatcom County's goals in a mutually beneficial matter.
- Policy 11C-2:* Review current comprehensive environmental protection programs to ensure that they consider multiple economic parameters including development objectives and impacts and the economic benefits of the natural environment as both a resource and an amenity.
- Policy 11C-3:* Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase/transfer of development rights and other mechanisms to assist affected property owners in the event that the regulations implementing these Environmental Goals and Policies prohibit or significantly restrict the use of property as otherwise permitted by law.
- Goal 11D:* Minimize potential loss of life, damage to property, the expenditure of public funds and degradation of natural systems resulting from development in hazardous areas such as flood plains, landslide-prone areas, seismic hazards areas, volcanic impact areas, abandoned mine locations, potentially dangerous alluvial fans and other known natural hazards by advocating the use of land acquisition, open space taxation, conservation easements, growth planning, and other options to discourage development in such areas.

- Policy 11D-1:* Minimize or avoid public investments for future infrastructure development on known natural hazard areas.
- Policy 11D-2:* Utilize the Best Available Science to research and investigate the nature and extent of known natural hazards in the county and make this information available to the general public and policy makers in an accessible and understandable form.
- Policy 11D-3:* Broadly inform the citizens of the county of the locations of known natural hazards to the health, safety and welfare of people and their property.
- Policy 11D-4:* Formally establish acceptable levels of public risk, for development in known natural hazard areas based upon the nature of the natural hazard, levels of public risk, establish criteria for approving, disapproving, conditioning, or mitigating development activity.
- Policy 11D-5:* Allow all permitted uses that do not require human habitation as long as probable adverse off-site impacts to other properties or natural systems (those impacts resulting from the interaction of the natural hazard and the proposed development) are minimized or mitigated. Probable adverse impacts should be prevented or avoided in habitats of State sensitive or federally listed plant and animal species.
- Policy 11D-7:* Develop a comprehensive land use management program consistent with the findings and recommendations of the Comprehensive Flood Hazard Management Plan.
- Policy 11D-9:* Review and revise Natural Hazard goals and policies and the locations of Natural Hazard Areas when establishing or changing zoning patterns and densities.
- Goal 11E:* Protect and enhance water quality and promote sustainable and efficient use of water resources.
- Policy 11E-1:* Actively promote and participate in education, research and information opportunities which better our understanding of the county's complex water resource systems. New information should be considered in the development and evaluation of management actions.
- Policy 11E-5:* Manage and prioritize water resources for multiple instream and out of stream beneficial uses commensurate with instream flows set by the State Department of Ecology.
- Policy 11E-8:* Work cooperatively with Federal, State, and local jurisdictions, Tribal governments, municipal corporations and the public to implement the goals, policies, and action items contained in this chapter.
- Policy 11E-10:* Promote awareness and participation in management and protection efforts by individual citizens and community as a whole.
- Policy 11F-1:* Manage surface water systems, where appropriate, on a watershed basis.
- Policy 11F-2:* In conjunction with the public and appropriate local, state, and federal jurisdictions, define and identify watersheds which may require special protection. These areas may include aquifers, critical aquifer recharge areas as defined under the Growth Management Act, Groundwater Management Areas, wellhead protection areas, and high priority watersheds such as those specified under WAC 400- "Local Planning and Management of Non-point Source Pollution", WRIA Watershed Management Planning, and under legislative policy direction (e.g. Nooksack Basin, Lake Whatcom, Lake Samish and Drayton Harbor).

- Policy 11F-3:* In conjunction with the public and appropriate local, State, Tribal, and Federal jurisdictions, develop management strategies for those areas requiring special protection. Management efforts should consider both water quality and quantity. Water quality efforts should help reduce the likelihood that potential contaminant sources will pollute water supplies. Water quantity efforts should include consideration and protection of recharge areas as appropriate and potential effects on stream flow.
- Policy 11F-6:* In conjunction with all jurisdictions develop and adopt programs to protect water quality and quantity within watersheds, aquifers and marine water bodies which cross jurisdictional boundaries.
- Policy 11G-8:* Encourage the use of Low Impact Development Strategies. Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, grassed street swales instead of curbs and gutters. Encourage alternate surfacing options and other techniques associated with low impact development (see Glossary).
- Policy 11G-5:* Evaluate the role of watersheds in the maintenance of water quality and quantity and determine what cumulative impacts development activity may have on watershed hydrology.
- Policy 11G-10:* Develop and administer regulations and incentives such that there is no net loss of ecological functions and values of wetlands and fish and wildlife habitats.
- Policy 11H-1:* Define and identify habitats and habitat features important to fish and wildlife.
- Policy 11H-6:* Consider sensitive fish, shellfish, and wildlife species and their habitats when establishing zoning densities and patterns.
- Policy 11H-7:* Promote voluntary fish and wildlife habitat enhancement projects through educational and incentive programs. These projects, which can be done by individuals, organizations, and businesses, should buffer and expand fish and wildlife habitat.
- Policy 11H-11:* Regulate the operation of river gravel extraction activities in such a manner so as to provide long-term protection of fish and wildlife habitat and water quality.
- Policy 11H-13:* Evaluate the full value of the fishery, including its cultural and economic value, in land use decisions that may impact that fishery. Unavoidable impacts to an individual habitat or fishery should be mitigated.
- Policy 11J-5:* Native vegetation and soils on stream banks and shorelines should be disturbed as little as possible. In situations where re-vegetation is necessary to restore stream bank or shoreline stability and provide shading, site-specific native plans should be used. Retention of vegetated riparian areas on all lake and marine shorelines should also be encouraged.
- Policy 11J-7:* Encourage native vegetation and soils retention and plantings, which provide or maintain the beneficial uses and functions of streams, rivers, lakes and marine shorelines.
- Policy 11K-2:* Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines.
- Policy 11K-3:* Biologic functions of wetlands are complex and interwoven. Evaluate the full range of potential and immediate economic impacts in land-use decisions relating to wetlands, including the value of fisheries, wildlife, recreation, farmlands, sustainable

resources, air and water quality, flood control, real estate, cultural attributes, and other entities.

Policy 11K-4: Encourage land development that avoids, minimizes, or mitigates wetland impacts. Impacts to important wetlands should be contingent upon full mitigation measures that equitably compensate for wetlands impacts, on a case by case basis. Strongly discourage alteration of land that results in the degradation of significant wetlands.

Policy 11K-6: Recognize beneficial wetland uses, functions, and values. Support protection of fish and wildlife habitat, water quality, plant diversity, flood attenuation and low flow contribution, and water storage through planning, acquisition, incentive programs and mitigation.

Policy 11K-7: Development proposals should be assessed on a case-by-case basis so that marginal wetlands are not preserved at the expense of upland areas with higher habitat value.

Goal 11M: Protect and enhance shellfish habitat in commercial and recreational areas in order to ensure a productive resource base for long-term use.

Policy 11M-2: Restore degraded waters within the drainage basins of shellfish growing areas to a level that allows/supports shellfish harvesting.

Policy 11M-3: Protect shellfish resources by means of prevention. This should include surface and ground water monitoring for early detection of pollution which will minimize the damage and cost of resource restoration.

Policy 11M-4: Improve knowledge of the importance of protecting, preserving, and improving the quality of shellfish habitat within the County. Seek out valuable partnerships that will raise awareness, provide education, and enhance shellfish habitat.

Policy 11M-5: Develop Low Impact Development standards in shellfish habitat areas.

Policy 11M-8: Identify and restore functions of key wetland areas, which are selected through best available landscape-based science.

Policy 11M-10: Continue to partner with jurisdictions in B.C. to minimize impacts on shellfish habitat.

Action Item 1. Work with the community to develop and implement a comprehensive environmental management strategy. The result of these efforts should be a Comprehensive Environmental Management Program that identifies both regulatory and non-regulatory elements. These elements should be organized, developed and implemented consistent with the three sections of the Environmental chapter. They include Water Resources, Natural Systems, and Natural Hazards.

Action Item 3. *Ensure* that local regulations are not in conflict with one another, are in compliance with the new comprehensive plan, meet the minimum GMA requirements and are capable of being administered in an efficient and fair manner. Successful integration of Whatcom County environmental regulations must include the following:

- Title 16 Whatcom County Critical Areas Ordinance, Whatcom County SEPA Ordinance, Agriculture Nutrient Management Plan
- Title 17 Whatcom County Flood Hazard Management

- Title 20 Whatcom County Water Resource Protection Overlay Districts, Whatcom County Stormwater Special Districts, Whatcom County Water Resource Special Management Areas,
- Whatcom County Clearing Regulations
- Title 21 [Whatcom County Land Division Regulations]
- Title 23 Whatcom County Shoreline Management Program
- Whatcom County Comprehensive Plan (agriculture, forestry, mining)
- Whatcom County Coordinated Water System Plan
- Other Local Environmental Regulations or Standards
- Whatcom County Road Standards
- Uniform Building Code

Action Item 6. Develop a comprehensive and streamlined system of permitting and approval of building and land development projects which incorporates environmental protection. All effort should be made to make the permitting process accessible and understandable to the public. To this end, the application and permitting process should be housed in one accessible location. Additionally, a uniform, step-by-step procedure should be developed for the permitting process. This procedure should be available as a printed handout to prospective applicants and other interested parties.

Action Item 7. Develop systems for tracking development in sensitive areas such as the Lake Whatcom, Lake Samish, Drayton Harbor and Birch Bay watersheds or priority areas containing habitats used by federally listed threatened or endangered species.

Action Item 11. Improve existing administrative procedures as follows:

- Enforcement: Establish strong education, inspection, compliance and enforcement measures for each of the three programs (Natural Hazards, Water Resources, and Natural Systems). An analysis of existing enforcement effectiveness should establish the requirements for additional enforcement needs.
- Staffing: Provide adequate staffing to administer and enforce the programs outlined above. The county should analyze staffing needs and provide staffing to meet these needs.
- Permits: Develop a streamlined permit process so that the applicant can readily understand what is required (in simple, straightforward language); can fill out the application without expending large amounts of time and money; and does not have to wait unacceptable periods of time. In meeting this objective, the county should pursue the following:
 - one stop service
 - clear permit information and instructions
 - well thought out and reasonable permit requirements
 - acceptable permit processing time
 - code flexibility when necessary to provide for a reasonable use of property and when no other reasonable or economically feasible design alternative exists

- review by pre-approved, private sector professional, where appropriate, to provide choice of reviewing options for applicants.
- Information Service: Continue to develop a strategy of mapping and analysis of environmental features that affect land use activity. These efforts should supplement and refine existing knowledge and coordinate with other information gathering activities. To achieve this objective the county should:
 - consult with private sector to review the methods and procedures for the above mapping and analysis;
 - identify the specific type of land feature, the known location of the feature, and specific risk (probability of damage) of the particular feature or of human developments;
 - broadly publish the results of the mapping and analysis, including maps, public information brochures, summaries, and complete documents.
 - define relevant environmental terms such as "Environmentally Critical Areas."
- Accountability: Review and modify existing policies, regulations, and administrative processes to insure efficiency, effective service to the community and implementation of the environmental goals of the Comprehensive Plan. Provide a time-table for the environmental review portion of permits to ensure predictable and expeditious processing of permits.

Action Item 12. Develop a working relationship with development organizations, as well as environmental protection and property rights organizations. In doing so, Whatcom County should seek assistance from, and strive to assist, these organizations in the resolution of ongoing conflicts between development, environmental protection, public resources, and property rights interests.

Action Item 18. Include identified natural hazard areas in areas designated for density reduction.

Action Item 22. Continue the identification of areas requiring special protection such as wellhead protection areas, aquifers and high priority watersheds, and incorporate that knowledge into management actions including dissemination of the information to the general public.

Action Item 26. Identify critical aquifer recharge areas and develop management options for review by the County Council.

Action Item 27. Develop criteria for establishing water resource protection areas, and adopt measures to protect those areas.

Action Item 34. Amend subdivision, zoning, and other land use regulations and design standards to require that land use activity minimize the amount of impervious surface whenever practical. Alternate surfacing options should be encouraged wherever possible.

Action Item 42. Formulate and implement a comprehensive watershed-based environmental management program to protect fish and wildlife. The program will include the remaining action items.

Action Item 43: Formulate an administrative approach to the review of development and planning proposals which consider natural system policies.

Action Item 44. Investigate and develop programs for acquisition and restoration of important fish and wildlife habitat areas.

- Action Item 45.* Develop and enter into cooperative agreements with State and Federal agencies and neighboring jurisdictions for the purpose of identifying and protecting natural systems.
- Action Item 46.* Identify and map important habitat corridors throughout the county.
- Action Item 54.* Identify existing and historically important fish habitats. Include a component that seeks to protect and restore these habitats and to mitigate future impacts to fish habitats.
- Action Item 58.* Amend the Critical Areas Ordinance to protect threatened and endangered species, consistent with RCW 36.70A.172, which calls for giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, and Department of Ecology rules relating to Best Available Science (WAC 365-195, Part IX).
- Action Item 63.* Develop a system of classifying wetlands, assigning buffers, and addressing riparian wetlands and habitat for listed species that follows state guidelines.
- Action Item 64.* Incorporate Best Available Science to support criteria for buffer reductions and mitigation.
- Action Item 65.* Formulate a comprehensive watershed-based wetlands protection component of the management program that incorporates both regulatory and non-regulatory elements in order to protect wetlands in Whatcom County. This component will include the remaining action statements.
- Action Item 66.* Describe, inventory and categorize wetland systems in Whatcom County. Assess the functions and values of these systems as they relate to fish, wildlife, water quality, and water quantity.
- Action Item 67.* Synthesize the myriad of federal, state and local regulations relating to wetlands into a single, unified local policy document that meets the intent and direction of the comprehensive plan. This document should be as brief and concise as possible.
- Action Item 68.* Develop a mitigation program that will allow for full development build-out in designated Industrial and commercial zoning districts. The program should include provisions for the creation of off-site wetland mitigation and for the creation and utilization of mitigation banking.
- Action Item 71.* Work with local, state, tribal and federal agencies to address problems that affect marine waters and shellfish habitat. Utilize appropriate response mechanisms to insure timely and correct response to problems as they arise.
- Action Item 73.* Identify areas within the county that are important to shellfish habitat preservation i.e. wetlands, nearshore areas, etc. Utilize this data when making land use management and preservation decisions.
- Action Item 74.* Create a tracking mechanism to document progress made toward improving downgraded shellfish areas. This information will be useful not only in helping to support an upgrade when water quality shows improvement, but also in helping to prevent degradations in currently approved shellfish areas.
- Action Item 75.* Work with other County committees, programs, or processes, such as MRC, SRFBoard and WRIA Watershed Management Planning to address issues associated with shellfish and shellfish habitat.