

Council Natural Resource Committee Recommended Whatcom County Code Amendments to Implement the Shoreline Management Program (WCC, Title 23)

*Council Natural Resource Committee recommended text amendments are identified by double underline and ~~double strikethrough~~ text.

**Planning Commission recommended text amendments are identified by single underline and ~~single strikethrough~~ text.

Whatcom County Critical Areas Ordinance (WCC, Chapter 16.16)

1) 16.16.225 Regulated Activities

- A.2. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, subject to the provisions for a non-conforming structure pursuant to WCC 20.83. WCC 23.50.0790 and WCC 16.16.275.
- B.3. Alteration is necessary to accommodate an approved commercial/industrial shoreline dependent-water-oriented use and any associated development/activity and/or the development activities listed in SMP 23.90.13.B.7.a when permitted in accordance with the Whatcom County Shoreline Management Program (SMP) ~~where the facility provided that such development~~ is operated, located, designed and constructed to minimize and, where possible, avoid critical area disturbance to the maximum extent feasible; or

2) 16.16.230 Exempt Activities

The following activities as specified are exempt from the provisions of this chapter:

- A. Class I, II, III and IV-Special forest practices conducted in accordance with the applicable standards of the Washington State Forest Practices Act, WAC 222-16, except where either of the following applies:
1. The lands have been or are proposed to be converted ~~under a conversion option harvest plan~~ to a use other than commercial forest product production as provided in chapter RCW 76.09.050 and RCW 76.09.240; or
 2. On lands which have been platted after January 1, 1960, as provided in RCW 76.09.050 and RCW 76.09.240.

3) 16.16.285 Penalties and Enforcement

- C. Within ~~20~~ 30 calendar days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or revision shall be reviewed by the Hearing Examiner if the aggrieved party files a written appeal therewith of said decision within 10 calendar days of its issuance.

4) 16.16.320 Geologically Hazardous Areas – General Standards

- C. Agricultural activities may be allowed within geologically hazardous areas without a farm conservation plan; except that, a farm conservation plan shall be required for agricultural activities within landslide hazard areas and associated buffers.

5) 16.16.355 Standards – Erosion Hazard Areas

- G. Stream bank stabilization and shoreline protection may be permitted subject to all of the following standards:

1. Shoreline protection measures located within coastal or riverine erosion areas shall use soft armoring techniques (bioengineering erosion control measures as identified by the State Department of Ecology and the Department of Fish and Wildlife guidance) unless the applicant provides a geotechnical analysis demonstrating that bioengineering approaches will not adequately protect the property, ~~provided that all of the following shall apply:~~
24. The armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply from feeder bluffs.
32. The armoring will not adversely affect critical areas including habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.
43. The proposal shall comply with WCC Title 23.
54. Hard bank armoring is discouraged and may occur only when ~~The property contains an existing legally established permanent structure(s) that is in danger from shoreline erosion caused by wave tidal action, waves or riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply. Hard armoring shall not be used to address normal sloughing, erosion of steep bluffs, or shoreline erosion itself, when preservation of existing structures is not a concern.~~
65. The erosion is not being caused by upland conditions, such as the removal of vegetation or human alteration of existing drainage.
76. Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

6) 16.16.720 Habitat Conservation Areas – General Standards

- L. Instream structures, such as, but not limited to, high flow bypasses, dams, and weirs, shall be allowed only as part of a watershed restoration project as defined pursuant to WCC 23.110.W.1150.32 or identified in watershed planning documents prepared and adopted under RCW 90.82, the Salmonid Recovery Plan or Salmon Recovery Board Habitat Project List, and the County's Shoreline Restoration Plan and upon acquisition of any required state or federal permits. The structure shall be designed to avoid adverse effects on stream flow, water quality, or other habitat functions and values.

7) Article 8 – Definitions

“Compensatory mitigation” means a ~~mitigation~~ project for the purpose of ~~mitigating replacing~~, at an equivalent or greater level, unavoidable critical area and buffer impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not limited to, wetland creation, restoration, enhancement, and preservation; stream restoration and relocation, rehabilitation; and buffer enhancement.

~~“Existing and ongoing agricultural activities” means those activities conducted on lands defined in RCW 36.70A.030 and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that result in the filling of an area or bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a non-agricultural use, or has lain idle for more than five years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.~~

“Feasible alternative” means an action, such as development, mitigation, or restoration, that meets all of the following conditions: (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b) The action provides a reasonable likelihood of achieving its intended purpose; and (c) The action does not physically preclude achieving the project’s primary intended legal use. Feasibility shall take into account both short and long-term monetary and non-monetary costs and benefits ~~alternative that is available and reasonably capable of being carried out after taking into consideration, existing technology and logistics in light of overall project purposes, and that has less impact to critical areas. Cost shall not be the sole basis for determining feasibility.~~

“Maintenance ~~or and~~ repair” means those usual activities ~~work~~ required to prevent a decline, lapse or cessation from a lawfully established condition ~~keep existing improvements in their existing operational state or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition~~. This does not include any activities ~~modification~~ that changes the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.

“Monitoring” means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of ~~such ecosystems~~ functions and processes, and/or assessing the performance of required mitigation measures through~~out~~ the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features compared to baseline or pre-project conditions and/or reference sites, ~~and includes gathering baseline data~~.

“Qualified professional” or “qualified consultant” means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree

in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related field, and related work experience and meet the following criteria:

- a. A qualified professional for wetlands must have a degree in biology, ecology, soil science, botany, or a closely related field and a minimum of ~~five (5)~~ three (3) years of professional experience in wetland identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems.
- b. A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or closely related field and a minimum of three (3) ~~five (5)~~ years professional experience related to the subject species/habitat type.
- c. A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.
- d. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.

~~“Repair or maintenance” mean an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.~~

“Site” means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant’s/proponent’s ownership or control that is the subject of a development proposal or change in use ~~where the proposed project impacts an environmentally critical area.~~

8) Appendix C Native Growth Protection Easement Sign Installation Guidelines

Type 1 Signs – NOTES:

- 1) NGPE signs shall be placed no greater than ~~400~~ 200 feet apart around the perimeter of the NGPE. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign

Type 2 Signs – NOTES:

- 1) NGPE signs shall be placed no greater than ~~400~~ 200 feet apart around the perimeter of the Native Growth Protection Easement. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the Native Growth Protection Easement unless otherwise approved by the County Critical Areas Specialist.

Whatcom County Zoning Ordinance (WCC, Title 20)

9) 20.97.017 Aquaculture.

“Aquaculture” means the farming or culture of food fish, shell fish, or other aquatic plants or animals in fresh or salt water areas and may require development such as fish hatcheries rearing pens, and structures and shellfish rafts, as well as use of natural spawning and

rearing areas. The term aquaculture also includes activities related to either growing, handling, or harvesting of aquatic produce, such as fish and crab, including, but not limited to, propagation, stocking, holding, nurturing, disease treatment, waste disposal, water use, development of habitat and structures. [Private, non-commercial aquaculture activities that do not require development shall not be subject to the use provisions of WCC, Title 20 and are permitted in all zoning districts when permitted in accordance with the provisions of the Whatcom County Shoreline Management Program \(WCC Title 23\).](#)