



Memorandum

TO: Planning Commission
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Asst. Director
DATE: 27 May 2016
SUBJECT: Critical Areas Ordinance Review for 9 June 2016

At its next meeting the Planning Commission will continue its review of the Critical Areas Ordinance and hold a second public hearing. In preparation, please review this memo, the attached revised BAS/staff report and draft code, and the attached proposed Findings of Fact.

Commission Questions/Comments from Previous Meeting(s)

Could staff organize the lists of Best Available Science documents in the BAS report for easier reading?

Commissioner McClendon has asked if staff could rearrange the lists of BAS documents reviewed so that a reader could quickly see which documents were specifically relied on. Staff has now done this, and it is reflected in the attached, revised BAS/Staff report.

Unfinished Items

At your last meeting, staff presented revised volcanic hazard language; however, the Commission asked staff to make further modifications based on their discussion. Staff has revised the text, as shown in the 5/31/16 version of the draft code included with this packet (§16.16.310(C)(4) and §16.16.350), addressing:

- The Commission made changes to Table 1 and asked staff to rectify the text of 16.16.350(C) with those changes. This has been accomplished by removing the text, as it was redundant and the table is easier to read.
- Commissioner Knapp wanted to make sure that the Mt. Baker ski facility could be rebuilt were it to be damaged or destroyed. However, this is already the case, as it falls on federal land and is not subject to Whatcom County regulations. Therefore, no amendments are needed for this issue.
- The Commission indicated they wanted to look at prohibiting overnight accommodations in Lahar Zones A & B. Language has been added to Table 1 to preclude uses having overnight accommodations.
- Commissioner Honcoop asked whether certain uses that might become nonconforming uses under these rules—such as schools, fire stations, etc.—

could be rebuilt were they to be destroyed by something, or expanded. Section 16.16.275(D) would allow destroyed structures to be rebuilt. Section 16.16.275(C) would prohibit expansion of such structures.

New Items

Findings of Fact

Since your last meeting, staff has developed a list of Findings of Fact for your consideration (attached). Once approved, these, too, would be provided to the Council for consideration.

Shoreline Management Program Amendment

As you may be aware, the courts found that Critical Areas Ordinances do not (automatically) apply in the shoreline areas. Some jurisdictions have solved this by having a separate set of similar regulations in their Shoreline Management Program. However, many, including Whatcom County, chose to adopt their standard CAO by reference in their SMP, thus making those rules apply.

Whatcom County's adoption by reference is found in WCC 23.10.060(A). The below text shows that section, and the amendment proposed by staff.

23.10.060 References to plans, regulations or information sources.

- A. The Whatcom County critical areas ordinance, Chapter 16.16 WCC (Ordinance No. ~~2005-068~~, dated ~~September 30, 2005~~, ~~2016~~, and ~~as amended on February 27, 2007~~) is hereby adopted in whole as a part of this program, except that the permit, nonconforming use, appeal and enforcement provisions of the critical areas ordinance (WCC ~~16.16.270~~16.16.270 through 16.16.285) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16 WCC, are for this specific version.
- B. Where this program makes reference to any RCW, WAC, or other state or federal law or regulation, the most recent amendment or current edition shall apply.
- C. Stipulated Judgment No. 93-2-02447-6 between Governor's Point Development Company and Whatcom County, the state of Washington, and the Department of Ecology is incorporated by reference into Whatcom County's shoreline management program. A copy of the judgment is on file with the Whatcom County Planning and Development Services Department.

Suggested Motions

Because this is a complicated endeavor, staff has taken the liberty to propose the following motions for the Planning Commission to consider:

1. Move to recommend approval of the *Whatcom County Critical Areas Ordinance 2016 Update – Best Available Science Review: Addendum to the 2005 BAS Report*.
2. Move to recommend approval of the amendments shown in the draft Critical Areas Ordinance, as amended this evening.
3. Move to recommend approval of the amendment to WCC 23.10.060 as shown above.
4. Move to adopt the Findings of Fact, as amended this evening.