

**This "Comment Summary" matrix provides a summary of each individual comment, by submital, during the 3/1/17 -3/31/17 public review and comment period of the draft Critical Areas Ordinance. The "Comment #" in the first column may be used to identify which submition has commented on a particular topic/section in the "Summary Comment and Response Matrix."**

Critical Areas Ordinance (Title 19) Public Comment on Draft (3/1/17-3/31/17) COMMENT SUMMARY				
Comment #	Topic(s)	Method Received	Name	Summary
1	<b>General</b>	Email	Doug Lyons	Ordinance unneccesarily restricts development; suggests formation of citizens committee to review with the idea of reducting regulations; rather than applying regulations county-wide, select areas for development with lesser regulations; Private property owners should have more latitude to develop their property.
2	<b>General</b>	Web	Hank Anderson	Zooming in or out on the maps takes a very long time; no way to print just a portion
3	<b>19.300 FWHCA</b>	Web	Justin Morgan	Requesting that the section of Enetai Creek north of Helm St. in Bremerton be re-designated from Fish Habitat to Non-Fish Habitat; Request the no development buffer guidelines for a fish bearing stream be reduced from 150 ft. to 50 ft.
4	<b>19.200 Wetlands</b>	Web	Tom Coleman	Trail building in KC parks should meet US Forest Service Guidelines; experienced and trained trails volunteers should be consulted in decisions regarding trail locations, type and restrictions.
5	<b>General (Ag.)</b>	Web	Jerry Darnall	County is proposing to require BMPs and an established farm plan.Cite the RCW's that give the County the authority to redefine beyond state statutes "existing and ongoing agriculture".
6	<b>Definitions (19.150)</b>	Web	Ron Gillespie	Mitigation, specifically for wetlands, should not be allowed where "create" is the method. Cannot compensate for wetlands by creating where one doesn't exist; Delete "creation" from <b>19.150.465(A)</b> and all of <b>(B)</b> .
7	<b>General-Buffers</b>	Letter (3/15)	(KAPO?)	What is the CAO intending to protect? Disagree that buffers provide measurable protection; Replace "buffers" with "no-pesticide, vegetated hardscape setback of 25 feet" from critical areas; Add "all water falling on a parcel shall be percolated into the ground without leaving the parcel". <i>Swinomish</i> case: County may depart from BAS if it provides a reasoned justification for such departure; Maps of non-conforming parcels (not provided?)- no harm proven from existing structures inside what are now deemed critical areas/buffers. Failure to treat highway runoff as only "impactful study" showing fish mortality cause.
7	<b>19.100 Applicability</b>	Letter (3/15)	(KAPO?)	.110 precludes gardening, etc; No benchmarks; Replace "existing native vegetation" with "functionally equivalent vegetation".
7				.130(B)- Danger Trees, why would anyone say they have a danger tree if common practice is to just quiety but down?
7				.155 Notice to Title- should be restricted to only the critical area, not buffer because this changes over time
7	<b>19.200 Wetlands;</b>	Letter (3/15)	(KAPO?)	.205(A)- Enhancement and GMA policy of no net loss [do not] fit together; What is the BAS justification to reduce buffers;

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7				.225(A) in current CAO, regarding Docks, should be shown as strike-out, but should not be deleted because applies to lakes and wetlands
7	19.300 FWHCA			(D)- credibility of wildlife corridors
7	19.400 Geohazards			19.400- No way to track the markup.
8	19.200 Wetlands	Web	Frank Stricklin	Is habitat fragmentation addressed in the CAO? How many trails are enough in Kitsap open spaces? Forested wetlands often overlooked due to types of vegetation present. Hatchery vs. wild fish is a moot controversy is there is no habitat for either.
9	19.100 Intro	Web	Tom Nevins	.130(A)(3)- 20% expansion statement could be misinterpreted, consider restatement
9				.135(A)(1)- Variances, consider defining or rewording "in the vicinity" because open to interpretation
9				.135(A)(3)- "variance will not result in substantial detrimental impacts...", consider removing word "substantial", which implies that the impact to the critical area is detrimental and creates a "net loss of function"
9				.135(A)(4)- insert "minimum" before "permitted use", used by developers to get the maximum use of the lot, usually to the detriment of critical areas
9				.140(A)(4)- insert "minimum" before "reasonable"
9				.150- Appeals, who might be considered an "affected party"? Consider removing "by the applicant of affected party".
9	19.150 Definitions	Web	Tom Nevins	.545 "Reasonable Alternative"- Replace "lower" with "minimal", or redefine as "an activity that could feasible attain or approximate a proposal's objectives with no net loss of critical areas quality, function and values."
9	19.200 Wetlands	Web	Tom Nevins	.210 (B)(1)- Cat. 1 Wetlands, Remove "or unique" because "rare" is the larger category that includes all "unique wetland types".
9	19.300 FWHCA	Web	Tom Nevins	.315 (A)(3)- Provisions for decreasing buffer, What is the format of the consultation with WDFW, other than the review of the HMP, that would lead to an admin. reduction in buffer width?
9				.315 (G)- Farm resource conservation plan, these agreements can result in major deductions in buffer protected areas as the conservation district often does not adhere to buffer guidelines and KCD is not a regulatory body.
9	19.400 Geohazards	Web	Tom Nevins	.425( C )- word "seismic" should read "landslide" in intro sentence.
10	19.150 Definitions	Email	P. Anderson	.170 Bog and .315 Fen- Use definitions in 2016 Wetland Guidance
10				.325 Fish and wildlife habitat conservation areas-for clarity and consistency with WAC 220-660 and RCW 90.48.020 recommend revised definition
10				.395 Grazed wet meadows- Recommend striking this definition, not a term used by Ecology or the Corps for wetland regulation
10				.430 Hydric soils- For consistency with BAS and state and federal delineation standards, recommend replacing with definition from Field Indicators document
10				.465 Mitigation- for consistency with WAC 197-11-768 recommend revision
10				.480 Ordinary high water mark- recommend revision for consistency with RCW 90.58.030(2)(c)
10				.495 Pond- for clarity and consistency with BAS, Kitsap County SMP and other state and federal statutes, recommend deleting
10				.700 Wetlands, isolated- Replace with 2016 Wetland Guidance definition.
10	19.200 Wetlands	Email	P. Anderson	.205(D) Prevent turbidity and pollution of wetlands and <del>fish or shellfish bearing other regulated waters of the state;</del>
10	19.200 Wetlands	Email	P. Anderson	.210(B)(3)and(4)- Recommend adding the following conditions to the exemptions for small Cat.III and IV wetland: <del>Are not associated with riparian areas or their buffers;</del> <del>Are not associated with shorelines of the state or their associated buffers;</del> <del>Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology);</del> <del>Do not contain a Priority Habitat or a Priority Area1 for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter XX.XX; and</del> <del>Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.</del>

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10	<b>19.200 Wetlands</b>	Email	P. Anderson	<b>.220 C(1)(b)</b> - Administrative Buffer Reductions- recommended striking this provision, not supported with BAS. Reductions in buffer width should only be allowed through buffer averaging. We support the proposed buffer averaging provisions in the current draft.
10	<b>19.200 Wetlands</b>	Email	P. Anderson	<b>19.200.225 (B)</b> Agricultural Restrictions- Recommend striking second sentence provision that "restrictions shall not apply to those wetlands defined as grazed wet meadows, regardless of their classification, only where grazing has occurred within the last five years", because not consistent with resource protection;
10				<b>.225(F) Utilities and (G) Parks</b> - Since work in wetlands or in-water will require state and federal approval, recommend adding the following: Before beginning work in-water or within wetlands, it shall be the utility's responsibility to ensure all other required state and federal approvals have been obtained.
10	<b>19.200 Wetlands</b>	Email	P. Anderson	<b>.250 C</b> Wetland Replacement Ratios TABLE 19.200.250- Science has not sufficiently evolved to create or re-establish bogs or Wetlands of High Conservation Value, Recommended replacing "Case-by-case" to "Not considered possible". Also, change "6:1 Rehabilitation" to "Case-by-case" in the Rehabilitation column for these wetland types.
11	<b>General</b>	Email	Dean Jenniges (KAPO)	Historical context of 2005 CAO update; Recommends a total rewrite of the 2017 CAO.
11				Swinomish Indian v. Western Washington to be considered, including use of established baselines and no requirement to establish mandatory riparian buffers.
11				Recommends DCD and Planning Commission read the document and consider the court case of Presbytery of Seattle v. King County and the "3 prong due process test"
11	<b>19.100 Intro</b>	Email	Dean Jenniges (KAPO)	<b>.105 (A)</b> - If critical areas so important, how does the County justify mitigation, and conflicts with policies 4 and 5
11				<b>.110(D)</b> only adds permitting requirements where there were none;
11				<b>.115</b> - relationship to other county regulations is without criteria and arbitrary
11				<b>.120 (D)(2)(c)</b> - written request for extension, but no DCD required response time, section is arbitrary and no criteria
11				<b>.130 (A)</b> Existing nonconforming structures section is too confusing
11				<b>.130 (B)</b> Danger Tree Removal- criteria should be removed, provides no basis for allowing property owner to make determination of liability
11	<b>19.200 Wetlands (general)</b>	Email	Dean Jenniges (KAPO)	Entire section without a baseline of statistics which could be used to establish if a wetland was disturbed or not. Wetlands are only of value to wildlife which uses them for habitat. Does not take a specialist to figure out what and where a wetland is. This is an added cost to the developer and needs to be rewritten (see <i>Swinomish</i> case).
11	<b>19.200 Wetlands</b>	Email	Dean Jenniges (KAPO)	<b>.220(B)(1)(f)</b> - tree protection rules, how did these come into existence? Entire section restricts property owners ability to determine landscape; why were all of the distance changes to buffers increased?
11	<b>19.400 Geohazards</b>	Email	Dean Jenniges (KAPO)	<b>19.400.415</b> Does DCD have the expertise to add this entirely new paragraph?
11				<b>.435(A)(4)</b> -why has native vegetation become such a priority over ornamental or other types of vegetation?
11				<b>.435(B)</b> - What seismic maps are used and what is their accuracy as permitting is subject to that information?
12	<b>19.200 Wetlands</b>	Web	Terry Fischer	Lives on property owned by family for over 40 years; was one of the main property owners next to the Shadowfax development in Silverdale, but was never notified of the plans or would have commented; personal knowledge of wetlands and seasonal stream in this area, but told by County that "no wetlands exist on that parcel", then that wetlands were only in a small portion; the wetlands have been diminished to a small area, no buffer and is used for construction storage / filled. "Vehemently opposed to what is happening....and the destruction of wetlands crucial for the survival of many of our wildlife."
13	<b>General (maps)</b>	Web	Pat Fuhrer	Why aren't eagle nests, aquifer recharge areas and critical drainage areas not shown on the Building Limitations Map; those overlays are also "building limitations" and one could get the wrong idea that there are no limitations on a parcel, when in fact there are others not referenced.
14	<b>General</b>	Letter (3/27)	M. Gustavson (KAPO)	Requesting a one year delay; Table of contents needed
14				No "science support document" found to support changes in buffers, as required and was provided in 2005

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14				"no identification of the creatures warranting protection", which means we have no baseline populations or way to measure progress in a Water Quality Monitoring Program or a Salmon Habitat Monitoring Program, required under Swinomish; no benchmarks provided; no local creatures listed as critical (WAC references in definitions are incorrect); What species are intended to be protected, they are not listed in the draft and the document needs to list them and benchmarks for each
14				homes are already located in critical areas with no apparent harm; Prior to 35 foot setback rule, nobody had ever reported a problem and building constructed up to edge of streams, still no proven harm; 95% of Kitsap are in mapped critical areas and therefore parcels/structures are nonconforming without any harm proven or measurable environmental benefit
14				the County is not required to follow BAS in the record if it provides a "reasoned justification for such departure"; supports the use of standard, vegetated setbacks of hardscape, but only to protect water quality and no further buffers
14				CAO effects more citizens than any other document, but is often not read by Commissioners and staff have little oversight; current draft is illogical, full of errors and violations of court decisions
14				Problem intended to be solved is not stated;
14				buffers do not provide measurable protection for these critical features, creates uncertainty for property owners, resulting in inaction (economic impact); the average parcel must provide five technical studies, significantly driving up the cost.
14				Dept. of Ecology threatened the county would be "out of compliance" and ineligible for grants. The Swinomish decision removes this threat of non-compliance and Spromberg study shows us what is needed to clean water
14				In 2005, there was a promise of annual reviews of CAO effectiveness, but this was not conducted and there is no Western Washington science supporting buffers are needed or effective
14	<b>19.100 Introduction</b>	Letter (3/27)	M. Gustavson (KAPO)	<b>.110 (A) and (F)</b> Applicability- the wording of this section makes it illegal to move any dirt or plant material without first obtaining a permit and violates <i>Citizens Alliance for Property Rights v. Sims</i> and is vastly over-reaching.
14				<b>.110(G)</b> Applicability Area of Review- "Largest potential buffer or setback" must be restricted to the parcel in question. Since virtually all rural parcels are developed, there can be no measurable positive effect of Title 19's requirements, but adds thousands to construction costs
14				<b>.120(B)</b> Review Authority- Authority granted to DCD violates separation of powers and is an example of the dangers of administrative law;
14				<b>.120(C)</b> - Second sentence grants DCD authority to revoke permits already granted, violates WA Supreme Court case in the Columbia River gorge where appeal unsuccessful when lodged during construction;
14				<b>.130(A)(4)</b> - requires construction to begin within 24 months, no allowance given to time to obtain permit
14				<b>.135</b> - disallowing construction enjoyed by surrounding properties developed prior to date of the ordinance may violate Lucas, and "substantial detrimental impacts" fails to provide benchmarks to define "substantial"
14				<b>.140</b> reasonable use exception- There is no minimum "reasonable use" defined in Title 19 and "picnic table" definition overturned in Lucas, previous planning commission voted to recommend including construction of a single-family residence as "reasonable use"; Precluding a development because it poses an "unreasonable threat" to the "welfare on(or off) the development proposal site has been used to object to increased traffic, etc., potentially contradicting court cases; "Hearing examiner shall make the final decision" in reasonable use cases violates decisions that grant access to courts. Need to list relevant court cases in 19.150.550
14				<b>.150 Appeals</b> - Administrative law proceedings are considered informal and no record is made of the appellant's testimony, therefore there is no record on which to base an appeal to superior court
14				<b>.155 Notice to Title</b> - recommend notice to only describe boundaries of the critical area, as buffer requirements change; "runs with the land" and is a permanent restrictive document;
14				In 2005, KAPO provided 3800 peer reviewed studies proving 9-16 foot grass buffers provide adequate water quality protection in western Washington, but County relied on an east coast study instead; What BAS is being used by DCD? No required "Science support document" has been provided; Attached study "Coho Salmon Spawner Mortality in Western US Urban Watershed: Bio-filtration Prevents Lethal Storm Water Impacts, Julian A. Spromberg, et al., Journal of Applied Ecology, 8 October 2015;
14				<b>.160 General application requirements</b> - Requires the applicant "to confirm the nature and extent of any critical areas on or adjacent to the property", violating the privacy of the neighbor;
14				<b>.170 Enforcement</b> - This section must state a warrant must first be obtained by the county employee and reference McCready.

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14	19.150 Definitions	Letter (3/27)	M. Gustavson (KAPO)	Add "Benchmarks"
14				In "Best management practices" and "Buffer", add "or functionally equivalent" after "native"
14				"Danger tree"- WAC refers to logging and CAO expands this to include buildings, with regulations about arborists, permits, etc., none of which are mentioned in the WAC;
14				"Director"- clarify "authorized designee" and needs to be written with time and event specificity if representative is to inspect private land;
14				"Erosion hazards"- delete coastal reference because this is in SMP
14				"Fish and Wildlife Habitat Conservation Areas" and "Habitats of local importance"- no criteria or benchmarks to designate, violates Sims and Swinomish;
14				"Functions and values"- requires specificity and benchmarks per Swinomish
14				"Hazardous Substance"- only justification for buffers must require the same testing criteria in WAC
14				"Impervious surface"- needs to allow for improved land to accommodate water runoff through infiltration techniques and should incorporate "Low impact activities" and "Retention facilities" into this definition
14				Add "Impervious Surface Wetland and Stream Setback" (see letter for details), implementation of this definition and the 25' setback therein, would eliminate the requirement for wetland and stream buffers from CAO.
14				"Lot"- definition needs to be reinserted
14				"Mitigation" and "Out of kind compensation"-definition violates decisions in Koontz, Nollan, Dolan, Hawkes Co., Sackett, and Lucas;
14				"Non-conforming use or structure"- deletion of this definition violates US Constitution;
14				"Performance-based development" and "Permit"- deletion is not understood
14				"Practical alternative"- must be directly related to issue (nexus and proportionality)
14				"Reasonable Use"- a true minimum reasonable use needs to be defined
14				"Re-establishment"- should be wetland re-establishment
14				"Refuse"- delete, refuse is unacceptable in ALL cases and on all land per County code
14				"Seismic areas"- add "two categories are mapped: 'Severe' and 'Moderate' seismic areas"
14	19.200 Wetlands	Letter (3/27)	M. Gustavson (KAPO)	Dept. of Ecology places counties/cities in a difficult position to defend prescriptive buffers, without defining, in measurable terms, chemical risk to wetlands or creative solutions
14				There is a disparity of restrictions on stormwater placed on homeowners, when virtually no such restrictions apply to public facilities (roads, buildings, parking lots)
14				.205(A)- if wetlands so valuable for groundwater percolation, why are livestock ponds exempt?; In first sentence, replace "and increase" with "of", delete "and enhancing, when required,...", GMA does not require an increase of these features and functions;
14				.205(D)- delete "...or shellfish..", as this is covered in the SMP
14				.215(A)- delete "...or its largest potential width.."
14				.215(C.1)- delete paragraph 1
14				.215(C.2)- delete "...or its standard buffer..." (see proposed impervious setback language)
14				.215(C.2)(a.1 and 2)- Replace "250 feet" with "100 feet", which would be same as well and septic drain field requirements; Replace "standard buffer" with "...25 foot impervious Surface setback..."
14				.215(C.2)(d) and (e)- delete in sentence 2, "...not.." and "...buffer width modifications..." and add "The 25 foot impervious surface wetland and stream setback shall remain in grass coverage and not be otherwise modified."
14				.220- replace with .150.422 recommendation
14				<b>Table (A)</b> Land use impact, is redundant in light of .150.422 recommendation and because the only creature might be salmon and no benchmarks are set, the table is null; .220(B)(1)Wetland buffer requirements and (2) Buffer Averaging- delete entirely, buffer averaging is strictly a punishment and is of no benefit to the wetland and drives up housing costs
14				.220(B)(3) Variance- replace text with "No variances shall be allowed to 19.150.442"
14				.220(C)Fencing and signs- delete buffer references, place construction fences, etc. 10 feet from wetland during construction."
14				.220(D)- use 19.150.442 recommendation to replace this section
14				.220(E)-delete section because redundancy to (C) and (D)
14	19.300 FWHCA	Letter (3/27)	M. Gustavson (KAPO)	Comments in this section reflect Swinomish and the Spromberg study; Replace "buffers" with "25 foot impervious surface setback"
14				.305(D) Line D is added, without underline indication, and without proof there are wildlife forms in Kitsap County that migratory within the County. Need to identify species, requirements and benchmarks
14				.310(A.2)- should list species that qualify as Class I and Class II, no such wildlife are listed in WAC 232-012-011 or WAC 232-12-014;
14				.315- replace "buffer width and minimum building setback" column heading with "25 foot impervious surface setback in addition to requirements of Chapter 19.400 "Geological Hazardous Areas".
14				.315 (A)(2)- incorporate infiltration or filters described in 19.150.442 recommendation
14				.315(A)(3)- delete, already at minimum acceptable

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14				.315(A)(8)- delete, redundant with recommendation for .150.442
14				.315(D)- bio-filters described in .150.442 shall be installed to treat road runoff at all stream crossings
14				.315(G)(2)- replace "encumbering the buffer" with "encumbering the stream and its impervious surface setback"
14				.315(F)(4)- In second sentence, replace "buffer" with "habitat".
14				.315(G)(3) Land use division- directly conflicts with Kitsap County Comprehensive Plan Reasonable Measures for maximum lot sizes in urban areas
14	19.400 Geohazards	Letter (3/27)	M. Gustavson (KAPO)	Replace "buffer" with impervious surface setback" This does away with the 15 foot setback in addition otherwise found throughout Title 19.
14	19.700 Special Reports	Letter (3/27)	M. Gustavson (KAPO)	.710(B)(2) Wetland Delineation Report- delete "or within two hundred fifty feet of", as this would require the applicant to enter and survey a neighbors property, same applies to .710(B)(6)
14				.710(B)(8)- delete "including vegetative, fauna, habitat", as a thorough study of these characteristics could easily become a large study with limited value
14				.710(B)(12)- delete "and buffers" , as they change over time and would be redundant with .150.442.
14				.715 Wetland mitigation report- needs exhaustive simplification and is far too complex and costly
14				.715(F)(9.c)- delete "buffer", word is redundant and implies a required 300 foot buffer, which is often not the case
14				.720 Habitat management plan- must display a list of critical habitat so applicants know what they are dealing with
14				.720(D)(1)(a-c)- delete, redundant with .150.442
14				.730(A)(2) Hydrogeological report- a report of well heads within 1000 feet of the project violates McCready and 4th Amendment.
14	19.800 Appendices	Letter (3/27)	M. Gustavson (KAPO)	Appendix E- delete ..."and buffer"... from title and text as they are not a hard requirement;
14				Appendix H- Alteration form- delete this form.
15	General	Letter (3/27)	Jack Hamilton	
15	19.100 Introduction	Letter (3/27)	Jack Hamilton	<b>19.100.110 precludes gardening, etc; No benchmarks; 19.100.130(B)- Danger Trees</b> - people will just remove the tree without providing notice; ; Notice to Title- should be restricted to only the critical area, not buffer because this changes over time; Replace "existing native vegetation" with "functionally equivalent vegetation".
15				<b>19.100.130(A)(3)</b> - 20% expansion statement could be misinterpreted, consider restatement; 19.100.135(A)(1)- Variances, consider defining or rewording "in the vicinity" because open to interpretation; (A)(3)- "variance will not result in substantial detrimental impacts...", consider removing word "substantial", which implies that the impact to the critical area is detrimental and creates a "net loss of function"; (A)(4)- insert "minimum" before "permitted use", used by developers to get the maximum use of the lot, usually to the detriment of critical areas; 19.100.140(A)(4)- insert "minimum" before "reasonable"; 19.100.150- Appeals, who might be considered an "affected party"? Consider removing "by the applicant of affected party".
15				<b>19.100.105 (A)</b> - If critical areas so important, how does the County justify mitigation, and conflicts with policies 4 and 5; (D) only adds permitting requirements where there were none; 19.100.115- relationship to other county regulations is without criteria and arbitrary; 19.100.120 (D)(2)(c)- written request for extension, but no DCD required response time, section is arbitrary and no criteria; 19.100.130 (A) Existing nonconforming structures section is too confusing; 19.100.130 (B) Danger Tree Removal- criteria should be removed, provides no basis for allowing property owner to make determination of liability.
15				<b>.105 (A) Statement of purpose</b> - State a clear intent and commitment to protect private property rights as required by the Constitution and GMA - Needs a clear intent and commitment to protect the rights of private property as required by GMA and Constitution, including in policies (what are the specific GMA/ other authority references to support the existing policies?) Who determines impact and course of action? Could result in mitigation on another's property.
15				<b>.105 (B)</b> Include as Policy Goal number 1 a policy the adheres to the Constitution and GMA to protect individual property rights and hold those right protected from administrative takings and other infringements under this title.
15				<b>.105 (B.1)</b> - Where is the specific GMA reference that supports this policy?
15				<b>.105 (B.2)</b> - Where is the specific GMA reference that supports this policy?
15				<b>.105 (B.4)</b> - Exactly what are adjacent lands? Who determines that status? When is the determination made? If "adjacent" is not critical why would critical guideline apply? This is an abuse of property rights.
15				<b>.105 (B.6)</b> - What activities cause detrimental affection and who determines that " When is it determined?
15				<b>.105 (B.7)</b> - What authority exists for this policy? This directly contradicts provisions of the Constitution .

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15				.105 (B.9) - Is "stormwater" any precipitation that falls to the ground in Kitsap County? If I catch the water from my roof in a rain barrel or cistern is it "stormwater" under this title?
15				.105 (B.12) - How do we determine if an area was previously impacted and who gets to choose what course of action is to be followed? This could have property owner A trying to carry out mitigation on property B. Do you understand the concepts of private property?
15				.105 (B)6- what activities cause detrimental affect and who decides?
15				.105 (B)9- Is "stormwater" any precipitation falling to the ground in Kitsap County? Does this include water captured in a rain barrel?
15				.110 (A) Applicability - What happens when a permit is not required? Does the property owner proceed at his own risk because some third party may determine that some kind of critical area exists on the property? Definition requires tightening to remove potential abuse by authority.
15				.110 (B) Applicability - Once again extension of the title to "adjacent" areas is not appropriate. The specific land is either critical and regulated or not regulated under this title. The ability for authority to extend applicability without constraint or legislative approval is not appropriate.
15				.120 Review Authority - Elected commissioners are the original delegated authority in GMA, not the Director or employees; make the regulation clear or do not implement at all
15				.120 Review Authority - Time limitations: Written request time limit on applicant, but no DCD required response time (arbitrary and no criteria); authority granted to DCD violates separation of powers; grants DCD authority to revoke permits already issued; extension should be granted unless there are exceptional conditions that would preclude such- appears to be a lack of understanding for the process and timelines associated with development
15				.120 (A) - Delegating total responsibility to the "Department" or the director to act on what they perceive to be the intent of the legislative body or their interpretation of GMA is not consistent with the original delegation of authority to the elected Commissioners. The Commissioners, in their legislative actions, are responsible to the citizens of the county. Appointed Directors or general employees are not.
15				.120 (B) - This is a clear example of why delegating authority to an appointed position is not appropriate. The title effectively places the burden of implementation, including a determination of both title intent and the legal basis for any action on the Department. A citizen has a specific right to know the actual meaning of a law or regulation that they are required to comply with. If ignorance of the law is appropriate then keeping the citizen ignorant is even more inappropriate. It is not up to a citizen to guess what a the title intends. Either make the title clear or do not enact it.
15				.120 (C) - This provision states that previous permits and conditions are "grandfathered "except". Either they are or they are not. This effectively leaves the property owner at risk for a later determination by "the department". How does that protect property rights?
15				.120 (D.2) - Why stress over a time extension? County doesn't understand the development process and associated timelines. Does permitting time include time required for studies, reports, and public hearings? If so, why is that time not granted to the requester so they actually have time to get the project underway? The county should recognize that until requirements are met and the permit actually issued, the developer will be at risk to obtain the necessary funding for the project. The extension should be granted lacking exceptional conditions that would preclude the extension.
15				.125 (D) - Exemptions What is a new or adverse impact? Who determines it? Would it have to be a condition that did not exist at previous review? Who is responsible to authenticate the "newness"?
15				.125 (E) - What are "best management practices"? Where are they documented? What title requires citizens of the county to implement these practices? Who determines if the practices are being followed? What if the practices are not effective?
15				.125 (E) - What is a "new" or "adverse impact", who determines / authenticates "newness"?
15				.125 (E) - What are the exact "best management practices" and where are they documented so citizens may implement? What if they are not effective?
15				.130 (A) Existing Nonconforming Structures - Administrative taking because it allows redefining of conditions (critical area/buffer) after the fact
15				.130 (A.2) Standards for existing development - This is an administrative taking via redefining a pre-existing condition that was previously acceptable. This is not an argument against properly defining a critical area but against the open ability to redefine such areas after the fact.
15				.130 (B) Standards for existing development - If a tree poses a danger to people or property, the property owner has a duty and the right to correct that situation. Consulting with an approved arborist or getting County approval is not a part of that duty process. The concepts of replanting and restoration are inappropriate. Who is responsible if a tree falls as a consequence of natural events (windstorms)?
15				.135 (A.1) Variances - disallowing construction enjoyed by surrounding properties developed prior to ordinance may be violation of Lucas; highest and best use should be determined by the property owner and that is the level the County taxes the property at expense of the owner

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15				.135 (A.2) Variances - Why is a "public hearing" required? What specific law(RCW) allows someone to comment on the use of another's property?
15				.135 (A) Variances - "public utility" not necessarily the property owner? Has rights and privileges superior to a/the property owner?
15				.135 (A.1) Variances - Property rights are not based on "what we let the other guy do" but are based in highest and best use as determined by the property owner. As described in the ordinance this would be a takings issue. The County bases property taxes on the highest and best use so the property owner should be able to expect that level of use.
15				.135 (A.2) Variances - How would a new owner have knowledge of actions taken by a previous owner? Language requires a current owner to know the history of parcel even if not provided at the time of purchase. What is the legal basis?
15				.135 (A.6) Variances - Why is a mitigation plan required for use of private property? What mitigation requirements can be imposed and who determines the requirements?
15				.135 (B) Variances - Why would a permit be needed?; critieria should be removed; homeowner should determine own liability
15				.135 (B) Variances - Why is a "public hearing" required? How is a non-owner allowed to affect the use of another's private property? What RCW, not a WAC, is used as legal basis for this requirement?
15				.135 (F) Variances - As proposed, a public utility has rights and privileges superior to the property owner? How does that work?
15				.140 Reasonable use exception - Highest and best use is determined by individual property owners, not the County. Again see Constitution Article I sections 3 and 16.
15				.140 Reasonable use exception and .145 - are administrative takings and violate the constitution; Federal court for civil rights and state District court for taking (Article 1, ion 3 section 3)
15				.140 Reasonable use exception - Articles 140 through 145 are the classic definition of an administrative taking and a direct violation of the constitutional protections guaranteed by the State.
15				.140 Reasonable use exception - The property owner would more properly file suit in Federal District Court for a taking by the County and a violation of civil rights and a suit in state District Court for a taking contrary to the provisions of Article I,ion 3 section 3 (PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law) and for failure to comply with section 16 EMINENT DOMAIN.. I Section
15				.150 (A.1) Appeals - This presumes that the Hearing Examiner has clear and documented evidence of the intent established by the Commissioners at the time of enactment of this Title. Since the Hearing Examiner is not a judicial entity they can neither establish case law or rule based on an opinion of intent. Would the appeal process not be more appropriate to include the Commissioners? That inclusion might also provide the opportunity for the Commissioners to recognize that the Title is not working as intended, that the department is not executing the program as intended, or that the basic assumptions on which the title was created are not correct.
15				.150 (A.2) Appeals - This presumes that the Hearing Examiner has clear and documented evidence of the intent established by the Commissioners at the time of enactment of this Title. Since the Hearing Examiner is not a judicial entity they can neither establish case law or rule based on an opinion of intent. Would the appeal process not be more appropriate to include the Commissioners? That inclusion might also provide the opportunity for the Commissioners to recognize that the Title is not working as intended, that the department is not executing the program as intended, or that the basic assumptions on which the title was created are not correct.
15				.150 (A.3) Appeals - This presumes that the Hearing Examiner has clear and documented evidence of the intent established by the Commissioners at the time of enactment of this Title. Since the Hearing Examiner is not a judicial entity they can neither establish case law or rule based on an opinion of intent. Would the appeal process not be more appropriate to include the Commissioners? That inclusion might also provide the opportunity for the Commissioners to recognize that the Title is not working as intended, that the department is not executing the program as intended, or that the basic assumptions on which the title was created are not correct.
15				.150 Appeals - administrative law proceedings provide no record on which to base an appeal to superior court; the Commissioners, not the Hearing Examiner should hear appeals because of evidence of intent of the Title.
15				<b>19.100.155 Critical area and buffer notice to title</b> - Under criminal law, this requirement would justify a charge of extortion. What authority does the County have to so encumber private property and use this kind of threat to force a property owner into compliance against his best interests and the provisions of the Constitutions?
15	<b>19.100 Introduction</b>	Letter (3/27)	Jack Hamilton	In fair application of this section of the Title it would be incumbent on the county to identify every parcel for which title exists or could be issued on which a critical area exists so that proper notice could be recorded. To not do so places an unusual burden on those who the County would force into notice to title and would be a violation of the "equal protection under the law" criteria.
15				.155 Notice to Title - Restrict only to critical area, not buffer; land division approvals should not "encumber the buffer", but rather just the "stream and its impervious surface setback"; justifies a charge of extortion- what athority does the County have to do this? All parcels with critcals areas need to be identified and recorded so as not to violate "equal protection under the law"

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15				<b>.160 (A) General Application Requirements</b> - This is either required or not. Making a "recommendation" that can later be used against an applicant is inappropriate.
15				<b>.160 (E) General Application Requirements</b> - If all the blanks are filled in, what in the world are we doing? If the content is technically correct, will the County representative reviewing the document have the technical qualifications appropriate to the task and at least equal to those required of the individual completing the application? How will the County document those qualifications for their personnel?
15				<b>.160 (F) General Application Requirements</b> - Since there are so many "at the discretion of the department" or "as determined by the Director", how does the applicant know what is required to comply with this provision? Please do not refer me back to the "recommended" initial conference.
15				<b>.160 (G) General Application Requirements</b> - Contradicts previous statement that the County locates "critical areas" generally and not exactly. How can an applicant create a site plan with specific location data? Using the County or requiring the applicant hire a consultant is inappropriate. This language requires a property owner to declare portions of the land unusable and, no longer enterable, and then gives the County authority to expand that determination.
15				<b>.160 (H) General Application Requirements</b> - I approve the first three words of this paragraph because they clearly identify what this entire document is about. That said, an environmental review should be valid in perpetuity. A new review should not be required.
15				<b>.165 Inventory provisions</b> - This demonstrates that the county is not sure of "critical area" locations. Confirmation of a critical area's existence requires a survey when a permit is requested. There are at least two problems with this approach. First, critical area protections should apply regardless of permit status since a permit request cannot and does not constitute the initial definition of a critical area (only the opportunity for the County to define a new critical area). Common restrictions should be applied, not restrictions to a particular parcel. Using discretion to apply regulations is incorrect and illegal. Second, why would a property owner apply for a permit to complete a minor renovation? The entire ordinance is an abuse of individual property rights.
15				<b>.170 Enforcement</b> - Must state a warrant must first be obtained by the county employee What training, beyond knowing code, do employees have to investigate and issue orders? If an incorrect order is given, is the County willing to accept fiscal and legal liability?; Department determinations should not exist (what is "imminent and substantial" danger to the environment?)
15				<b>.170 (A) Enforcement</b> - How are "employees" trained to be properly qualified to investigate and issue orders? If a fiscal and legal impact might be imposed on a property owner, a significant amount of training should be required for those making assessments and decisions. If an "employee" issues an incorrect order, is the County willing to accept fiscal and legal liability without litigation or will the property owner need to bring suit to have themselves fully restored?
15				<b>.170 (B) Enforcement</b> - This paragraph could be reduced to –"County inspectors will not enter onto private property without prior permission of the property owner or under the provisions of a duly issued warrant. In the case of leased property the lessee, unless specifically delegated in writing, does not have the authority to grant permission to enter."
15				<b>.170 (C) Enforcement</b> - Except for an immediate threat to personal safety, a stop work order must be delivered to the property owner or his designated agent. This clause should include protective language in the event that the county makes an error in assessment or decision in applying a stop work order, the county shall be liable for the loss suffered by the property owner or developer.
15				<b>.170 (D) Enforcement</b> - What is the penalty to the County for an incorrect or wrong determination?
15				<b>.170 (E) Enforcement</b> - What constitutes an "imminent and substantial" danger to the environment? The language is open ended and allows too much discretion for the department. If not specifically defined then it does not exist.
15				<b>.170 (F) Enforcement</b> - It is imperative that the property owner have equal opportunity to seek legal resolution under this title. That should be specifically noted in this section.
15	<b>19.150 Definitions</b>	Letter (3/27)	Jack Hamilton	use simple, common language for definitions ("detention facility", for example, has other meanings)
15	<b>19.150 Definitions</b>	Letter (3/27)	Jack Hamilton	<b>.100 Adjacent</b> - Need to better define "adjacent" (and ensure it has the same meaning throughout each chapter and without referencing back to itself)
15				<b>.140 Aquifer recharge area (and .215 Critical...)</b> - Aren't all areas in the county are "recharge areas"? If not, explain and provide scientific information to support the County position.; Where are critical aquifer recharge areas documented?
15				<b>.140 Aquifer recharge area</b> - Because all water in Kitsap County is, by County declaration received from precipitation falling within the County, it follows that the entire surface area of the county is a "recharge area". If that is not correct, please explain why it is not and provide some clear scientific information to support the County position.
15				<b>.150 Aquitard</b> - How is the practically determined and what evidence is required to support the determination?
15				<b>.155 Bank Stabilization</b> - sea walls and rock rip-rap would be appropriate under this definition
15				<b>.160 Best Available Science</b> - Just because WAC cannot get it right does not mean the County should be exempt from a proper definition

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15				.165 Best Management Practices - new paragraph D is redundant to A, and should be deleted.
15				.165 Best Management Practices - How determined? Where documented for implementation?
15				.200 Compensation - Compensation should refer to "just compensation", and another term should be used here
15				.200 Compensation - Essentially includes entire surface area of Kitsap County; not well defined
15				.235 Danger Tree - WAC listed refers to logging and CAO expands this to include buildings, arborists, permits, etc.; owner has right to remove
15				.260 Director - "authorized designee" needs to be clarified and written with time/event specificity to access private land; What is the process and qualifications?
15				.420 Hazardous Substance - Will this include CO2 since it is considered a hazard to our climate?
15				.420 Hazardous Substance - Only justification for buffers must require the same testing criteria in the referenced WAC
15				.440 / .442 Impervious Surface (Setback) - Definition includes every possible "development" to property. How is "pre-development" determined and documented?
15				.440 / .442 Impervious Surface (Setback) - needs to allow for improvements to accommodate LID infiltration methods and add "retention facilities"; Add "Impervious Surface Wetland and Stream Setback", the 25' setback therein would eliminate the requirement for wetland and stream buffers from CAO
15				.460 Low impact activities. - Please provide examples of "Low impact".
15				.465 Mitigation - What is the scientific basis for the creation of a new "critical area" that has no geographic association with the one on the permitted property and making a "critical area" from essentially whole cloth? This seems to imply that man can create a "critical area" how does that work without impacting one of the other conditions set forth in the Title?
15				.465 Mitigation (A) - Cannot "create" wetlands
15				.470 Native vegetation - See the comments regarding Exotic. Why does the definition include the entire Puget Sound region and not just Kitsap? Is there some scientific evidence that the vegetation history of hood canal is the same as Bellingham bay or the Straits of Juan de Fuca?
15				.475 (A) Normal maintenance - A property owner on who unknowingly has a critical area on a parcel will be in violation if using fertilizer or pesticides. Is that the intent and if so, how will this be enforced?
15				.485 Out-of-kind compensation - Improper use of "compensation" for property related issues. Please provide scientific support.
15				.500 Practicable alternative - A person cannot build a home on an easement. Highest and best use is determined by individual property owners, not the County. This is another attempt at trying to replace individual rights with non-existent public good or public rights. Rights belong to individuals. Group rights do not exist.
15				.535 Ravine - How about U-Shaped? Is there a generic definition from a dictionary that can be used?
15				.550 Reasonable use - An individual who tries to avoid "taking" findings and other legal actions is effectively being abused by local government.
15				.555 Reasonable use exception - The only provision for reasonable use is one that permits the property owner to exercise their rights to best and highest use and enjoyment of the property. Knowingly bypassing those rights is abusing the power of their elected offices.
15				.565 Refuse - How about dead animals, wind blow tree limbs, fallen trees, and all those other things that seem to make up the real world?
15				.610 Significant Tree - Breast height to who or what? Does it have to be "native" or is exotic also included? Are seedlings "significant"? Does location matter? How about who plants it and Why?
15				.615 Single-family dwelling - Please define "family" since it is used to determine who is affected by this ordinance. Does it include a legal relationship and/or extended family?
15				.635 Streams - Intermittent or Seasonal streams should not be considered fish habitat. Portions of my gravel driveway would meet the definition of a stream.
15				.645 Threatened species (state listed) - Under a strict adherence to the provisions of this Title, the habitat available for humans in Kitsap County will be severely curtailed and diminished. Can humans be declared a "threatened" species?
15				.660 Use or activity - So walking, hunting, fishing, "brushing" and such other non-developmental practices are not use or activity?
15				.665 Utilities - Does this include solar panels and windmills that might be installed on a property. Because they are impervious and or might endanger certain species or because they might be best located in a buffer, does the desire for green energy impact the need for protecting the environment? If so what has priority?
15				.675 Wellhead protection area - To what specific distance or is this just open ended? What is the definition of a Public water system or utility?
15				.680 Wetland delineation - What are the federal wetlands delineation manual or regional supplements? How is a property owner to know if they are using correct guidance?

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15				<b>.685 Wetland determination</b> - How and when is this done? Who does it? How is access to Private property gained to complete the determination? The term defined is used in the definition to define itself (Circular reference)?
15				<b>.695 Wetlands</b> - OK, you certainly lost me on this one. Wetlands may not be artificially created (except before July 1990 - as if there was something magic about that date) and as provided by government mandate. I fail to follow the logic in this definition. I thought "wetland" was a technical and not a political definition.
15				<b>.700 Wetlands, isolated</b> - What is the scientific rationale for the 100 foot separation and from where is the "radius" measured. Definition is confusing and will be abused.
15				<b>.705 Wetlands, mosaic</b> - What are you trying to say and how will this be determined in the field? Limits to the amount of land included in a "mosaic" if "wetland" areas are found across a large spread of the landscape? Is it possible for a major parcel of property to be "consumed" by a "mosaic"?
15				<b>.710 Wetlands of regional significance</b> - A site is either a wetland or not. How does allowing "the department" determine some level of protection priority fit in with the overall nature of this Title? Does that not permit discretion without specific guidance or limits?
15				<b>.715 Wetlands of statewide significance</b> - A site is either a wetland or not. How does allowing "the department" determine some level of protection priority fit in with the overall nature of this Title? Does that not permit discretion without specific guidance or limits?
15				<b>.725 (A, B, C) Wetlands specialist</b> - The way this is written all three (A,B, C) are required. How are B and C determined and certified? There are in excess of 40 defined BS in biological sciences, most of which have absolutely nothing to do with environment or wet lands. Do degrees in any of those areas satisfy the requirement?
15				<b>.730 (c) Wildlife biologist</b> - TWS with leadership involving numerous current state government employees, requires a BS and 5 years of experience. They also have a course preparing an individual for certification. The TWS mission more closely aligns with the nature conservancy and Sierra club instead of average citizens. Why is the County certification different from TWS?
15	<b>19.200 Wetlands</b>	Letter (3/27)	Jack Hamilton	Trail building in KC parks should meet US Forest Service Guidelines; experienced and trained trails volunteers should be consulted in decisions regarding trail locations, type and restrictions.
15				If a grass lawn is an impervious surface, what materials may be used adjacent (common meaning) to the edge of a buffer?
15	<b>19.200 Wetlands; 19.300 FWHCA; 19.400 Geohaz.</b>	Letter (3/27)	Jack Hamilton	19.200.205(A)- Enhancement and GMA policy of no net loss [do not] fit together; What is the BAS justification to reduce buffers; 19.200.225(A) in current CAO, regarding Docks, should be shown as strike-out, but should not be deleted because applies to lakes and wetlands; 19.300(D)- credibility of wildlife corridors; 19.400- No way to track the markup.
15				Is habitat fragmentation addressed in the CAO? How many trails are enough in Kitsap open spaces? Forested wetlands often overlooked due to types of vegetation present. Hatchery vs. wild fish is a moot controversy is there is no habitat for either.
15				Lives on property owned by family for over 40 years; was one of the main property owners next to the Shadowfax development in Silverdale, but was never notified of the plans or would have commented; personal knowledge of wetlands and seasonal stream in this area, but told by County that "no wetlands exist on that parcel", then that wetlands were only in on a small portion; the wetlands have been diminished to a small area, no buffer and is used for construction storage / filled. "Vehemently opposed to what is happening....and the destruction of wetlands crucial for the survival of many of our wildlife."
15				Entire section with without a baseline of statistics which could be used to establish if a wetland was disturbed or not. Wetlands are only of value to wildlife which uses them for habitat. Does not take a specialist to figure out what and where a wetland is. This is an added cost to the developer and needs to be rewritten (see <i>Swinomish</i> case).
15				<b>.210 (B)(1)</b> - Cat. 1 Wetlands, Remove "or unique" because "rare" is the larger category that includes all "unique wetland types".
15				<b>.205(D)</b> Prevent turbidity and pollution of wetlands and fish or shellfish bearing other regulated waters of the state;
15				<b>.220(B)(1)(f)</b> - how were tree protection rules established? Entire section restricts property owners ability to determine landscape; why were all of the distance changes to buffers increases?

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15				<p>Dept. of Ecology places counties/cities in a difficult positon to defend prescriptive buffers, without defining, in measurable terms, chemical risk to wetlands or creative solutions; There is a disparity of restrictions on stormwater placed on homeowners, when virtually no such restrictions apply to public facilities (roads, buildings, parking lots); <b>.205(A)</b>- if wetlands so valuable for groundwater percolation, why are livestock ponds exempt?; In first sentence, replace "and increase" with "of", delete "and enhancing, when required,...", GMA does not require an increase of these features and functions; <b>.205(D)</b>- delete "...or shellfish..", as this is covered in the SMP; <b>.215(A)</b>- delete "...or its largest potential width.."; <b>(C.1)</b>- delete paragraph 1; <b>(C.2)</b>- delete "...or its standard buffer..." (see proposed impervious setback language); <b>.215(C.2)(a.1 and 2)</b>- Replace "250 feet" with "100 feet", which would be same as well and septic drain field requirements; Replace "standard buffer" with "...25 foot impervious Surface setback..."; <b>.215(C.2)(d) and (e)</b>- delete in sentence 2, "...not.." and "...buffer width modifications..." and add "The 25 foot impervious surface wetland and stream setback shall remain in grass coverage and not be otherwise modified."; <b>.220-</b> replace with .150.422 recommendation; <b>Table (A)</b> Land use impact, is redundant in light of .150.422 recommendation and because the only creature might be salmon and no benchmarks are set, the table is null; <b>.220(B)(1)</b>Wetland buffer requirements and (2) Buffer Averaging- delete entirely, buffer averaging is strictly a punishment and is of no benefit to the wetland and drives up housing costs; <b>.220(B)(3)</b> Variance- replace text with "No variances shall be allowed to 19.150.442". <b>.220(C)</b>Fencing and signs- delete buffer references, place constuction fences, etc. 10 feet from wetland during construction."; <b>.220(D)-</b> use 19.150.442 recommendation to replace this section; <b>.220(E)-</b>delete section because redundancy to (C) and (D);</p>
15				<b>19.200.220 C(1)(b) Wetlands buffer requirements</b> - Administrative Buffer Reductions - recommended striking this provision, not supported with BAS. Reductions in buffer width should only be allowed through buffer averaging. We support the proposed buffer averaging provisions in the current draft.
15				<b>19.200.225 (B) Wetlands additional standards</b> - Agricultural Restrictions- Recommend striking second sentence provision that "restrictions shall not apply to those wetlands defined as grazed wet meadows, regardless of their classification, only where grazing has occurred within the last five years", because not consistent with resource protection; <b>19.200.225(F) Utilities and (G) Parks</b> - Since work in wetlands or in-water will require state and federal approval, recommend adding the following: <u>Before beginning work in-water or within wetlands, it shall be the utiliites responsibility to ensure all other required state and federal approvals have been obtained.</u>
15				<b>.205 (A) Purpose and Objectives</b> - If the County does not have an accurate inventory of wet lands and other critical areas in the County how is 'no net loss' to be achieved" What is the bench mark against which loss will be measured and who is responsible to maintain the documentation? What happens if there is a net gain?
15				<b>.205 (B) Purpose and Objectives</b> - What does "could arise" mean and how is it determined? Who is the authority for that determination?
15				<b>.205 (C) Purpose and Objectives</b> - The ordinance gives the County the authority to "plan" the use of private property so the "holder" whatever that is, to benefit wherever possible. First the term is "private property owner" not "holder" which appears to imply that people somehow "hold" property for the use and benefit of others. Second, the responsibility and RIGHT to determine best and highest use of property lies with the owner, not government.
15				<b>.205 (D) Purpose and Objectives</b> - You have not defined either turbidity or pollution for purposes of this Title. If common use is to be considered, it would appear that government itself is the major polluter of local waters and the primary cause of turbidity in those same waters. Does the Title apply to government or "public" actions and activities?
15				<b>.205 (E) Purpose and Objectives</b> - By definition (an apparent intent) the entire land, water, and air space of the County is considered to be wildlife habitat. Unfortunately, most of that same area or space is also private property. Under the protections of the Constitutions, government has no role ,or authority to maintain anything on private property.
15				<b>.210 (A.1) Wetland identification and functional rating</b> - Unless the County has a specific inventory of "wetlands" with appropriate definitions of wetland boundaries, this section is nothing more than a declaration of intent to future action to identify and encumber property. Unfortunately, the County is not delegated the authority to carry out such actions as relate to private property. Either produce a complete inventory of "wetlands" so the citizens are fully aware of where and when this title applies or change the approach.
15				<b>.210 (B) Wetland identification and functional rating</b> - If all of these descriptions are in the referenced manual why are they repeated here? Has the County modified any descriptions? Why are not wetlands on the County inventory already classified and so identified? Should this entire section be deleted?

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15				<b>19.200.210(B)(3)and(4) Wetland identification and functional rating</b> - Recommend adding the following conditions to the exemptions for small Cat.III and IV wetland: <u>Are not associated with riparian areas or their buffers;</u> <u>Are not associated with shorelines of the state or their associated buffers;</u> <u>Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology);</u> <u>Do not contain a Priority Habitat or a Priority Area1 for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter XX.XX; and</u> <u>Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.</u>
15				<b>.215 (A) Wetland review procedures</b> - If the County has not previously identified an existing wetland on a parcel, how will the applicant know to prepare and submit this report? If the county has properly defined the wet land, why is this report required? This section implies that the County is on a fishing expedition to find and define wetlands at the expense of the property owner and applicant. If that is not the case please explain exactly how this works.
15				<b>.215 (A) Wetland review procedures</b> - This certainly support the comment above and the transfer of responsibility from the County to the property owner to identify something the County needs to define so it can assign protections and deny use. This activity is covered in the Constitution, where?
15				<b>.215 (A) Wetland review procedures</b> - Does this mean the County will complete the task at County expense or that the County will conduct the study an transfer the expense to the property owner?
15				<b>.215 (A) Wetland review procedures</b> - First you require a licensed and certified consultant to perform a study, determine boundaries which may require a surveyor. The contract is between the applicant and consultant, not the consultant and the county. The County reserves the "right" to check the work of that licensed consultant and require modifications of the consultant's report. This implies that the County reviewer will have qualifications at least equal to those required of the professional consultant (including license if one is involved), have completed and independent study of the area in question, and have provided scientific evidence documenting the errors in the original report. If that is not the case, what is it the County will do? Will the County accept liability for any suit raised by either the applicant or the consultant regarding the report? It would appear that if the County does not accept the report as presented they are challenging the professional competence of the consultant which could lead to civil suit (not the Hearing Examiner).
15				<b>.215 (A) Wetland review procedures</b> - County is requiring property owners to follow its demands? To accept this provision, the property owner, under this title, freely gives their property to government. How is that proper?  The county never misses an opportunity to have applicants pay more money. If granted an expedited review for a fee, it translates into other applications not paying this fee will take longer?
15				<b>.215 (A) Wetland review procedures</b> - For the first time we are stating that the default (standard) wetland buffer is 250 feet surrounding the wet land. No discussion or scientific supporting the distance requirement. The 250 foot buffer will eliminate the development of significant properties in the County, drive the value of those properties down, and have immediate and lasting impact on the economic well-being of citizens. This is a takings according to the Constitution. If an acre is 4840 square yards ( a square of 208 feet per side) the 250 foot buffer encompasses about 6900 square yards or 1.5 acres. In urban zoning which has a norm of 5-9 homes per acre this means that not fewer than 15 homes would be built because of a minimal wetland and the potential for no acceptable use of the property exists. How does this benefit of the property owner? Will the County refund all property taxes on the encumbered property that have been collected since 1990 to the date when critical areas are determined to exist?
15				<b>.215 (A) Wetland review procedures</b> - This requires that the property owner not only permanently identify those portions of the property that are no longer subject to highest and best use but also implies that the property owner will have a continuing duty to maintain the signage to some acceptable level as determined by the County. Does this include a permanent authority for the County to enter into the property to make inspection to certify the wet land border is being maintained and properly identified? What are the penalties for non-compliance?
15				<b>.220 (A) TABLE DENSITY" BASED ON DEVELOPMENT TYPES</b> - zoning definitions result in all urban area wetlands as High and virtually all other residential area (rural) will be moderate. Is this an upper limit with potential for reduction or a lower limit with potential for increase in restrictions? County should identify and delineate wetlands as a matter of record and not require definition in this ordinance?
15				<b>.220 (A) Wetland buffer requirements</b> - Why include reference documents in table .220A? Impression is that the County is establishing the criteria? How will a property owner or applicant become aware of the revisions within referenced documents?

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15				<b>.220 (B.1.a) Wetland buffer requirements</b> - This means changing your highest and best use to satisfy County requirement. This appropriate under what authority?
15				<b>.220 (B.1.b) Wetland buffer requirements</b> - Introduces a new series of buffer rationales without first identifying what those regulated limitations are. How does the property owner know when a "habitat assessment" report is required?
15				<b>.220 (B.1.c) Wetland buffer requirements</b> - What is width averaging and how is "adverse impact" determined? Is this magic or is there a documented procedure that the applicant can consider before hand?
15				<b>.220 (B.1.d) Wetland buffer requirements</b> - Regardless of what the considerations might be, the property owner must surrender highest and best use of a fixed area of their property, as determined by the County, in order to receive County permission to use what may remain?
15				<b>.220 (B.1.f.1) Wetland buffer requirements</b> - Pacific Northwest most common presence on an undeveloped lot is trees. How and when did protecting trees (which belong to the property owner) have a higher priority than property rights?
15				<b>.220 (B.1.f.7) Wetland buffer requirements</b> - After reading this section, it appears that it would be in the best interest of the property owner to pray for fire or windstorm to level the property. There does not appear to be any other reasonable assurance that the property might ever be used so long as the County assumes unconstitutional use jurisdiction.
15				<b>.220 (B.2) Wetland buffer requirements</b> - If a buffer can be "administratively reduced" it would follow that the science underlying the creation of the buffer is subject to "administrative interpretation". This is an administrative decision based on some rationale other than science. If science is not the primary and only driver, why restrict the use of private property?
15				<b>.220 (B.2.a.6) Wetland buffer requirements</b> - The "administrative process" is a different act of extortion, that requires an expensive yet ineffective alternate to a common septic system. Keeps "native" plants on the site instead of permitting appropriate landscaping. Science to support effectiveness or necessity of the alternatives is not provided. All decisions and/or protections should be based in "Best Available Science".
15				<b>.220 (B.2.a) Wetland buffer requirements</b> - "administrative buffer reductions" and procedures to do it are illogical. How much does it cost the property owner?
15				<b>.220 (C.1) Wetland buffer requirements</b> - What does "fully stabilized" and "per County approval" mean? What is the cost in money and time to a project?
15				<b>.220 (C.2) Wetland buffer requirements</b> - Previous tables identifies that the County is directing a disturbance to prevent a disturbance. How are the boundary fence and signs to be put in place in a semi-permanent or permanent manner without making noise, vibrating the ground and inviting human intrusion?
15				<b>.220 (D) Wetland buffer requirements</b> - Ambiguous. Include clear definition of who determines protections and what they are.
15				<b>.220 (E) Wetland buffer requirements</b> - Width of Buffers for Category I Wetlands if the information in table is provided in the reference documents, why include it in this Title? Does that not lead to the impression that the County is establishing the criteria? Equally important, if the reference document is revised, how would an applicant using this Title be aware of the revisions?
15				<b>.220 (F) TABLE Examples of Measures to Minimize Impacts to Wetlands</b> - <u>Lights</u> : Is a full moon a disturbance? <u>Noise</u> : How about overflight of helicopters? <u>Pets and human disturbance</u> : Is the County actually designating the very existence of human beings (also known as citizens and taxpayers) as a "disturbance"?
15				<b>.225 (B) Additional development standards for certain uses</b> - How does a property owner demonstrate activity within the last 5 years? What specific level of activity meets the criteria?
15				<b>.225 (C.1) Additional development standards for certain uses</b> - What does this mean? Too subjective and open to department determinations without recourse.
15				<b>.225 (C.2) Additional development standards for certain uses</b> - This forces a property owner to abandon property because of a "critical area (wet lands)" but that same land can be used for "pedestrian or bicycle easements, viewing points. What applies to one use should apply to the other.
15				<b>.225 (C.3) Additional development standards for certain uses</b> - How about "as necessary to maintain roads and streets to the standards established for such"
15				<b>.225 (C.4) Additional development standards for certain uses</b> - Does maintenance or repair of an existing road require a mitigation plan to proceed? What are the specific criteria and requirements of a mitigation plan and how does the property owner know of that requirement?
15				<b>.225 (D.2) Additional development standards for certain uses</b> - Requires a property owner to surrender portions of the property? Does this require County determination? Does the determination require access to the property? This requires the owner to willingly reduce the value of the property and opens the property to future additional restrictions as determined by the department. What constitutional reference provides this authority to the county or state?
15				<b>.225 (D.3) Additional development standards for certain uses</b> - Shows a County bias towards increased density and attached dwelling units to minimize impacts to critical areas? How does this help a property owner who prefers a single family detached home?

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15				<b>.225 (D.4) Additional development standards for certain uses</b> - When does this determination occur? What constitutes permanent signs or fencing? Who is responsible for the maintenance of the "permanent" features? How is this to be enforced over time (permanence)?
15				<b>.225 (E) Additional development standards for certain uses</b> - An "increase" in the rate of flow is vague. Clarification needed for a property owner to determine what this means and the implications without a "finding" by the department?
15				<b>.225 (F) Additional development standards for certain uses</b> - This contradicts preceding rules and regulations which set wetlands aside as protect. The property owner has to sign away right to use property for a critical area and a buffer, give up an additional 15 feet outside the buffer , erect signs and fences, and be responsible for permanent maintenance of boundary markings and yet, we can turn the same wetland and buffer into essentially a public park. This entire exercise is a political statement and has little or nothing to do with environmental concerns.
15				<b>.225 (F.2) Additional development standards for certain uses</b> - How does a utility corridor easement get approved that transverses through private property for which a notice to title has been imposed? Is the property owner or utility responsible for the maintenance of boundary marking and fencing? If the utility equipment in the corridor experiences a major failure, what permits and studies are associated with entry to make repairs and who is responsible for those permits and studies?
15				<b>.225 (F.3) Additional development standards for certain uses</b> - How is it acceptable to locate a septic system inside a buffer (with department approval) but no other activity (by the property owner) is allowed. Regulations are difficult to follow. Doing major excavation in a "buffer" to support either sewer lines or a septic system is permissible but planting a non-native bush is not? What is the reason and logic behind these regulations?
15				<b>.225 (F.4) Additional development standards for certain uses</b> - What is "significant impact" Who determines that impact and what are the specific criteria used?
15				<b>.225 (F.5) Additional development standards for certain uses</b> - "department may require" is open ended and does not consider cost to a property owner. What criteria are used to determine the need for additional mitigation?  Language requires discover and define effort for every permit. Two significant issues. First, the land available for development cannot be determined until a request for permit including a site plan has been presented. The developer is already invested in the project, beyond land cost and has no assurance that that investment will result in a viable project. Second, the processes identified in this Title only come into play when a developer submit a request for a permit. This means that not all wetland or other critical areas within he county are receiving similar protections or that all property and property owners are being treated equally under the law. If that important, the rules and regulations should be issued at the state level and enforced universally throughout.
15				<b>.225 (F.5) Additional development standards for certain uses</b> - This applies to public lands only and some specific authorization process involving Commissioner approval is required to make this possible? If not, this would exempt public lands from regulations that private property owners are required to follow?.
15				<b>19.200.250 (C) Wetland Replacement Ratios TABLE 19.200.250-</b> Science has not sufficiently evolved to create or re-establish bogs or Wetlands of High Conservation Value, Recommded replacing "Case-by-case" to "Not considered possible". Also, change "6:1 Rehabilitation" to "Case-by-case" in the Rehabilitation column for these wetland types.
15				<b>.250 (A.1) Wetland mitigation requirements</b> - This seems just a bit unusual since the several above sections identify how wetlands and buffers can be violated.
15				<b>.250 (A.2) Wetland mitigation requirements</b> - What is appropriate technology and affirmative steps? Should the developer/property owner have knowledge of them beforehand?
15				<b>.250 (A.3.b) Wetland mitigation requirements</b> - How can a man made wetland replace a natural wetland? and who determines the effectiveness of the replacement? Where are the plans and procedures to create the replacement documented so the developer/property owner can be advised beforehand and make a sound decision as to how to best proceed?
15				<b>.250 (A.4) Wetland mitigation requirements</b> - Who is responsible for this and who determines when corrective measures are required? How long does this process continue? Will the newly created wetland have the same buffer, fencing and sign requirements as the original or can it be otherwise delineated? What happens if the created wetland fails? Will the property then be returned to unlimited use?
15				<b>.250 (C) Wetland mitigation requirements</b> - What logic and science is behind this table? How was a 12 to 1 ratio or 16 to one ratio determined as opposed to a 5 to 1 or 22 to 1 ratio?

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15				<b>.250 (D.2.d) Wetland mitigation requirements</b> - All proposed mitigation adds cost to the developer, results in a loss of future property use, and does not significantly help protect the environment. Past development did not consider "critical areas", why should current developers be restricted or forced to pay more than those in the past? City of Seattle continues to exploit critical areas without restriction, why should Kitsap property owners be restricted. Forests have naturally regenerated even with past and current timber harvests. Have Kitsap history and the regenerative ability of natural resources been factored into this ordinance
15				<b>.250 (E) Wetland mitigation requirements</b> - See the comments above about monitoring, determination of success and what happens if success is not achieved. Not appropriate to assign a ten year or longer authority to a department that has a significant turnover of personnel and an apparent 5 year horizon on revisions to this ordinance.
15				<b>.260 Incentives for wetland mitigation</b> - After the county has decreed a parcel of property as a wetland (or other critical area) and determined a buffer, there is a possibility that the County would purchase the land using tax dollars (that is the only source of County funds)? Two issues. First the County decides what land to designate and therefore determine what quality of land it would like to acquire. Second, the County would take the property off the tax rolls by purchase but leave it on the rolls if retained by the property owner. Establishes a conflict of interest and violates Constitutional protections?
15	<b>19.300 FWHCA</b>	Letter (3/27)	Jack Hamilton	Requesting that the section of Enetai Creek north of Helm St. in Bremerton be re-designated from Fish Habitat to Non-Fish Habitat; Request the no development buffer guidelines for a fish bearing stream be reduced from 150 ft. to 50 ft.
15				<b>.315 (A)(3)</b> - Provisions for decreasing buffer, What is the format of the consultation with WDFW, other than the review of the HMP, that would lead to an admin. reduction in buffer width?; 19.300.315 (G)- Farm resource conservation plan, these agreements can result in major deductions in buffer protected areas as the conservation district often does not adhere to buffer guidelines and KCD is not a regulatory body.
15				<b>.310 (B.1) Fish and wildlife habitat conservation area categories</b> - The County needs to complete an On-site survey to make a final determination to confirm DNR stream types? The determination will not be accurate if completed in other than the "wet" months. The county already has a series of "maps" that identify the streams of the county and depicts the "buffers" established for each. Why is this chapter more specific to those maps and buffers?
15				<b>.310 (B.3.a.1) Fish and wildlife habitat conservation area categories</b> - Where can the property owner find the maps or documentation that identifies these areas. If they do not currently exist, why not? This Title has been in effect for over ten years so there should be no "discovery" of habitat areas during site survey. If as new "specie" is added to this list, how does the County determine the specific land and water areas in the County which are impacted by the listing? Is this another application in which the rules are applicable only is a permit application is entered or does it actually apply equally throughout the County? If a "specie" is removed from the listing, how are impacted property owners notified and what process does the County use to document the reduction in restrictions on a property?
15				<b>.315 (A.1) Development standards</b> - What if the "buffer" is not natural vegetation area when the County defines it? Who is responsible to make it such? Who foots the bill? How does the County monitor the area to make sure that only "native" vegetation grows in the area? If an invasive plant, say Scotch Broom begins to grow in the area, who is responsible to remove it? What exactly can be done to "enhance" an area and how is that determined? Who decides if "enhancement" is appropriate? Who carries it out? Who pays for it?
15				<b>.315 (A.2) Development standards</b> - How many staff members has the County dedicated to establishing and monitoring these buffers throughout the County? Does OHM apply to lakes at the 100,year rainfall level or just day to day measurements.? You do realize that a lake in Kitsap county, unless it is physically connected to a larger body of water, say Puget Sound) is little more than an isolated body of water. Any longer term sustained fish in such a lake are either hatchery or of a population that is self-sufficient to survive. What are we trying to accomplish? The only way the water so Eastern Kitsap a get included is by expanding the definition of what is being protected?
15				<b>.315 (A.3) Development standards</b> - Permitting authority is overstepping and removing property rights. Under the auspices of "decreasing" a buffer, the department is extorting the land owner. Reference to multiple chapters and requiring production of one more plan is inappropriate.
15				<b>.315 (A.4) Development standards</b> - If the provisions for buffer size are based on types of habitat and types of specie, and the buffers are based on "best available science" how is it possible that an expansion of a buffer will be necessary? Either the science is wrong or the County just wants authority to encumber any property it desires?
15				<b>.315 (A.5) Development standards</b> - What science supports this determination? If the walls of the ravine are 250 feet deep why would an additional 25 feet at the top of the ravine (not considering geological hazards) be appropriate? How is the distance measured, actual land distance or vertical height from the OHM of the stream? Does this presume that the setback for a stream will vary on the land above the ravine on a foot by foot basis (or more frequently) to match the ravine depth or will an averaging method be used?

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15				<p><b>.315 (A.6) Development standards</b> - How is a channel migration zone identified, and what is the historical limit for such a zone? If the current channel is not the same as it was 100 years ago, notwithstanding the development and other factors that might impact stream channels, will the pre-existing zone become a "migration" zone in current use?</p>
15				<p><b>.315 (A.7) Development standards</b> - Why does the department get to identify how a buffer will be protected in this instance? Is there any limit to what may be required? How is boundary identification of this buffer different from any other?</p> <p>Why is it necessary to repeat the "Buffer" rules several times in this Title? Is it possible to use a standard set of rules for buffer identification, boundary marking, buffer reeducation or variation and buffer increase just once in the document?</p>
15				<p><b>.315 (A.8) Development standards</b> - Paragraph demonstrates the incorrect approach the County has taken with this ordinance. Removes property rights from the owner. Requires compliance with restrictions that are unidentified until after a permit is filed. The restrictions of the Title and the implementation of those restrictions are executed by unelected employees and are broad enough to allow those employees to "interpret" the intent of the Commissioners" without specific reference or consultation. The Title establishes a broad administrative process , using loosely defined guidelines to impose significant restriction of the use of private property with no consideration of the protections of the Constitution.</p>
15				<p><b>.315 (B) Development standards</b> - How does the property owner or the County determine a known" area? Does the habitat area for an eagle nesting area go away if the tree falls down or if the eagles cease to nest in the area? "Natural" vegetation inappropriate. How is compliance assured? (I have an example of a steam in my location that was over planted with "native" vegetation and is now virtually impassable. The over plant has also supported the appearance of a family of beavers, a new beaver dam and much more significant flooding of the area adjacent to the stream) How does that work out for creating and maintain a buffer? The stream "migration" is now considerably larger and the buffer must, by definition, be much greater but it was modified by action of the County.</p>
15				<p><b>.315 (C ) Development standards</b> - "All development permits... may require" is another example of lack of clarity. When and how would the expense and project time delay for a plan be required and who determines that requirement?</p>
15				<p><b>.315 (D.1) Development standards</b> - Major highways and roads throughout the state cross rivers and streams that the state has designated as "salmonid" yet this section would prohibit or seriously restrict the ability of a property owner to either access their property or fully use that property. Who determines feasibility of crossings and suitability of crossings? State process to replace culverts should not result in requiring private property owners to do the same. What science determines the "crossing" suitability for each individual location? Is the determination made by an independent professional, licensed to make the determination or by a County employee?</p>
15				<p><b>.315 (D.2) Development standards</b> - Is this for all natural salmonid habitat or does it include habitat created by introduction of hatchery fish to streams? That makes a difference because it could allow the state to significantly modify the use and access to property by undertaking a stocking action? For example, the salmon in Clear Creek are there because of a hatchery that was operated in the vicinity of half mile road some time ago. Is Clear Creek now a declared salmonid stream and if so what is the scientific basis for the determination?</p>
15				<p><b>.315 (D.3) Development standards</b> - How does protecting a single stream take priority over good engineering practices associated with construction of a bridge? The geology and mechanics associated with bridge construction, assuming safety of users, must take priority over some non-scientific concerns about placement of footings to protect salmon.</p>
15				<p><b>.315 (D.5) Development standards</b> - Is a single crossing required to be associated with easements to permit access to properties other than the one on which the crossing is located? How is this beneficial to the impacted property owner? Exactly what authority does the county use to make the determination of how many crossing is the correct number and when the requirement for easements might be excessive?</p>
15				<p><b>.315 (E ) Development standards</b> - Does Gorst Creek come to mind? It appears that the only possible authority able to determine the need or scientific justification for "relocation" of a creek or stream resides in government. Is there a documented history of relocation success in the state?</p>
15				<p><b>.315 (E.1, E.2, E.3) Development standards</b> - The preceding three paragraphs provide no sense of assurance that the governing authority has any notion of how to make this work properly. Something shall happen when required by a plan that is open to interpretation. A licensed engineer is going to certify that a projected occurrence based on ill defined assumption and loosely defined boundaries will be adequately covered by a proposed modification. And somehow ill- defined "functions and values" will be replicated or improved upon by a relocation? Where is the science and best engineering practices that support this effort?</p>
15				<p><b>.315 (F) Development standards</b> - If required, who applies a pesticide, herbicide, or fertilizer to properly maintain the Native vegetation within a buffer or to control or eradicate a noxious or invasive plant in those areas? Who pays the bill? Who is liable if the application has negative results on the buffer or habitat?</p>

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15				.315 (G) Development standards - Is this not a zoning consideration? Why is it in this Title? or is the Title referenced in zoning Title?
15				.315 (G.2) Development standards - This is a taking and/or extortion.
15				.315 (G.3) Development standards - No matter how much property may be encumbered by this Title, an aggregation of land shall be required such that a building lot, as defined by the department, must be included? How does this support the Constitutional guarantees and make sure that the property owner realizes highest and best use of their property? It has become increasingly apparent that the state has determined that, by law it has the authority to impose burden and restrictions on property owners that are associated with conditions that have existed prior to creation of the state and certainly prior to the establishment of private property within the state. A basic question that needs to be addressed somewhere in this Title is where the constitutional authority, delegated to government by the people, exists for the implementation of the level of restrictions and conditions of use on private property.
15				.315 (G.4) Development standards - Ill-defined authority being delegated to employees. Either a boundary needs to be positively identified or it does not. Why is this a department determination issue?
15				.315 (G.5) Development standards - What is "performance based development"? Who created it? Where is it documented? How would a property owner/developer know about it?
15				.315 (H) Development standards - This receives the same comment as the previous guidance on the subject. Considering all of the rules and restrictions imposed on the property owner to protect critical areas and the associated buffers it is incongruous to now propose that that same property can be used as essentially a public park or playground. The land under consideration is to either be so inviolate that it must be protected from inappropriate use and damage by the property owner or not. If it is permissible to create trails and educational opportunities in the area, then there is not realistic reason to preclude the property-owner for highest and best use of the property. There is no authority, other than eminent domain, that allows the state to take property for a greater public use. Creating a nature trail is not appropriate for eminent domain and certainly not without just compensation.
15				.315 (H.2) Development standards - Minimize? Why should removal be authorized for important features?
15				.315 (H.3) Development standards - This imposition can be authorized but a property owner who might require a minor incursion into a buffer area is subject to professional studies and mitigation. How does this work?
15				.315 (H.4) Development standards - Again, a property owner who needs a stream crossing to access or fully use property is subject to lengthy study and restrictions but a wildlife viewing trail, created on his property within a buffer, is just appropriate. Please identify the logic in this approach.
15				.315 (H.5) Development standards - An individual is forced (through administrative extortion) to surrender both use and value of property but a bike trail could be established on that same land area?
15				.315 (I) Development standards - Comments similar to previous sections dealing with utilities.
15				.315 (I.1) Development standards - Are best management practices fixed or dynamic? If practices change to allow less restriction on property use, are those changes back fit into existing applications and do property owners benefit from the changes?
15				.315 (I.5.b) Development standards - How is this enforced? Who established the before construction and post construction baselines? The way this is written the County could bankrupt a utility.
15				.315 (I.6.a) Development standards - Where in the commercial market are lead based paints available? How about paints with cupric oxide use in wet areas?
15				.315 (J) Development standards - The entirety of this section, although appearing to support "bank stabilization" actually presents a set of requirements and a process that makes it virtually impossible to create any kind of non-natural barrier or structure to restrict bank collapse or erosion. What the section does as does its counterpart in the Shoreline Master Plan, is present a situation for natural erosion and the loss of property as being preferable to a logical course of action to protect property.
15				.315 (M) Development standards - See comments on previous section addressing this subject.
15	19.400 Geologically Hazardous	Letter (3/27)	Jack Hamilton	.425( C )- word "seismic" should read "landslide" in intro sentence.
15				.415 Does DCD have the expertise to add this entirely new paragraph?; 19.400.435(A)(4)-why has native vegetation become such a priority over ornamental or other types of vegetation? 19.400.435(B)-What seismic maps are used and what is their accuracy as permitting is subject to that information?
15				.405 Purpose and applicability - Should not the protection of property also be included within the considerations? The intent below indicates that is part of the issue.
15				.405 (B) Purpose and applicability - If road construction is required to gather data or complete the field study for the report, does that mean that a permit will not be considered?

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15				<b>.410 (A.1) General requirements</b> - Who determines when a report is required? Why is there an automatic determination of maximum buffer and set back before any reasonable engineering process to mitigate or stabilize is considered?
15				<b>.410 (A.1) General requirements</b> - What does this mean? If good engineering practices include retaining walls or supporting piles to stabilize or safely use a site, as desired by the property owner, is that acceptable?
15				<b>.410 (A.1) General requirements</b> - What if there is an alternative manner under best practices or is that not possible?
15				<b>.410 (A.1) General requirements</b> - How is this determined and who makes that determination? Who has the liability if the determination is incorrect?
15				<b>.410 (A.1) General requirements</b> - Please see comments on previous section dealing with the same issues.
15				<b>.410 (A.1) General requirements</b> - to limb a tree or cut a bush. What is the specific logic and authority for this requirement? Is there some underlying documented evidence that property owners are incapable of protecting their own property or that without government intervention a direct hazard to public safety is created?
15				<b>.410 (A.1) General requirements</b> - See the previous discussion on "hazard" trees. What happens if a tree is felled by wind or other natural occurrence?
15				<b>.410 (A.1) General requirements</b> - This either stops all development for 7 months of the year or adds cost to the development without adding value. This should not require government oversight, the county needs to trust property owners and developers. What happens if the County approves a control plan but the weather exceeds norms and some erosion occurs? Who has the burden for corrective action? When the County places a requirement and approved the proposal submitted to satisfy the requirement, who is responsible when the proposal does not work? Can the property owner/developer be assured that County approval has actual meaning?
15				<b>.410 (A.1) General requirements</b> - So, regardless of the illogic of the underlying considerations or the added cost to the project. Is there any variance to this rule?
15				<b>.410 (A.1) General requirements</b> - Does the County not know where all existing logging roads are and the geological condition associated with those roads?
15				<b>.410 (A.1) General requirements</b> - What does this mean? How is it decided and imposed? What options (other than non-use) does the property owner have?
15				<b>.415 Designation of Geologically hazardous areas</b> - If they are for informational purposes only where exactly are the specific criteria and guidelines located so the property owner may properly understand? Apparently, since the following paragraphs are for information only, have little or no actual value in determining the existence of a condition, and are subject to determination of both the intent of the section and the definition of conditions by the department, there is little use commenting on the materials.
15				<b>.420 (C.3) Erosion hazard areas</b> - The definitions above all seem to rely on some sort of study or survey which implies a physical field examination of the subject conditions and a detailed record of the findings. Is this correct? If not, how were the determinations made? When addressing features as historically evident exactly how was the history created and validated? For purposes of consistency, were owners of property that were "surveyed" or those that fall under one of the categories identified advised of the studies, requested to participate, or advised of the results? If not, why not? Are the properties identified in the results of the studies and the various maps subject to and currently under "notice to Title"? If not, why not?
15				<b>.425 Landslide hazard areas, .430 Seismic hazard areas</b> - See comments above concerning erosion hazards area definition.
15				<b>.435 (A.2.a) Development Standards</b> - This requirement could make a property with no 100-year history of ground movement unusable simply because of inherent features. Why is this criteria fixed?
15				<b>.435 (A.4) Development Standards</b> - Why is additional buffer space or planting native vegetation acceptable but a properly engineered drainage flow system is not?
15				<b>.435 (B.1) Development Standards</b> - How does a geotechnical report determine that construction in or near a seismic activity area is safe. Is the issue relative safety or absolute safety? The engineer who prepares the report and the individual who approves the report may have a fiduciary responsibility to the property owner and be liable if the report is proven wrong at some future date.
15				<b>.440 (A) Review Procedures</b> - How frequently are these maps reviewed and updated? What are the qualifications of the individuals assigned responsibility to approve the information reflected on the maps?
15				<b>.445 Independent consultant review</b> - County personnel that review a consultant report should have the same training or certification as the consultant. The applicant is paying twice for the same professional training, the consultant (hired) then the county (no contractual authority with applicant)? If the department does not have the technical expertise to conduct a proper review of a required report why are they insisting on that report?
15				<b>.450 (C) Recording and disclosure</b> - County deprives an owner of property rights, extorts an agreement from the property owner by requiring a technical report, makes final determinations that supercede the consultant used to create that report, and absolves itself of legal accountability with regard to its determinations.

Critical Areas Ordinance (Title 19) Public Comment on Draft (3/1/17-3/31/17) COMMENT SUMMARY				
Comment #	Topic(s)	Method Received	Name	Summary
15	19.500 FFA	Letter (3/27)	Jack Hamilton	.505 Purpose - Please see the previous comments about how these special hazard areas were identified and defined and the active participation of property owners in the process.
15	19.600 CARA	Letter (3/27)	Jack Hamilton	<p><b>.605 Purpose</b> - As determined and documented in the WRIA studies, the entire surface of Kitsap County is an aquifer recharge area in that all water sources in the county are dependent on precipitation falling on county lands to maintain those sources. First priority is to retain all water that exists in the county and minimize outflow of those resources by first identifying those practices which most adequately support retention and infiltration. Because of the unique water resource situation for Kitsap (no mountain snowpack or mountain river flow) the realization that stream flows are a direct result of aquifer overcharge and stream flows should not be required to meet some minimum level. In essence, stream flows are determined by the annual levels of precipitation falling on the county (including the seasonal variations) and not some anecdotal prescribed flow level.</p> <p>Is this a Title requiring compliance or a general policy document upon which a title might be based? If this is a policy document, where and how has it been subjected to public review for purposes of establishment of policy? If it has not been reviewed, why not and how does the county now determine that rules and regulations can be established based on an unapproved policy?</p>
15				.605 (A) Purpose - Based on WRIA this would include the entire surface area of the county.
15				.610 (A.4) Critical aquifer recharge area categories - Please see the comments at erosion areas for concerns that apply to the designation of these recharge areas. If the "maps" or recharge area designations are maintained by utility districts, how does the department control the actual definition of area boundaries? If the department may revise areas and boundaries, what specific criteria are used and how are those determinations made and verified before they are included in the existing reports and maps?
15				.610 (B.2) Critical aquifer recharge area categories - This implies that a licensed hydrogeologist either uses GIS information or the results of their field studies imposed on GIS data. Which is the case? Is there any ongoing verification or validation of the information or is it locked in place once defined?
15				.610 (C) Critical aquifer recharge area categories - Will produce or has produced? What is the status of the "maps" since they are heavily referenced in the paragraphs above?
15				.615 (B.2) Development standards - Not fewer than three different jurisdictions get to decide what studies will be required and, have the authority to approve or disapprove the application. How does this work?
15				.615 (C.1) Development standards - Where is the specific authority for the "tribes" to become involved with use of private property? The title to private property is conditional upon the agreement of the "tribes" as inferred by this section, is that what the county has in mind?
15				.620 Activities with potential threat to groundwater quality - How was this list developed? What public review process was involved? How is the list maintained to make sure that uses no longer considered hazards are removed and newly identified hazards are added. For example, It is apparent that on-site septic systems are identified as a potential hazard while sewage treatment plants and public sewer systems are not. That is a bit concerning because of the most recent instances of pollution to creeks, streams and open water, public sewer systems have been the major offenders.
15	19.700 Special reports	Letter (3/27)	Jack Hamilton	.705 - Licensed professionals that would prepare these reports should review and comment on this draft. A mandatory part of that review and comment should include expected cost to the applicant for the study, survey, and reports. A specific effort needs to be made to minimize both effort and cost and still meet actual definition requirements. The county is attempting to clearly define and document the geophysical and habitat conditions of the county at the expense of the property owner. While most of the required studies refer to "maps" held by the county, they require a greater level of specificity of actual conditions on a site. How are the reports used? Why is the applicant paying for individual reports that are used to improve county documents and records?
15				.710 (B.3.e) Wetland delineation report - Is this really necessary? Why not five feet or eight feet? The cost of determining and producing this contour map will be significant.
15				.715 (J.4.d) Wetland mitigation report - Does this include those invasive plants used by the state for erosion control and bank stability?
15				.715 (K) Wetland mitigation report - It is of interest that the county would require a monitoring plan (with specific detail and reporting criteria) when the county has consistently failed to incorporate monitoring on the effectiveness of this Title in achieving the established goals.
15				.715 (M.2.a) Wetland mitigation report - Once again the county requires a "contingency" plan but has no idea of how this title is meeting objectives> Why should an applicant have to meet criteria that the county is not willing or able to implement?
15				.715 (R) Wetland mitigation report - If the county does not possess the technical expertise necessary are the consultants from this list the reviewing authority? Creating this list requires that an applicant accept the qualifications of a consultant without proper vetting. What happens when the department does not agree with the consultant's report? Who is liable for any added expense? What cost to the applicant results from using this list of "qualified" consultants?

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15				<b>.720 Habitat management plan (HMP)</b> - The bald eagle has been removed from the list of threatened and endangered species in 2007. Why do we continue to treat them as threatened or endangered in Kitsap County?
15				<b>.720 (D.2) Habitat management plan (HMP)</b> - Since we have learned that Spotted Owls are happy to reside in K-Mart signs and actually are more threatened by Barred Owls than anything else, just how exactly does one determine what plants are more conducive as habitat for each species and how are the differences in requirements reconciled for this plan?
16	<b>General</b>	Letter/ BoCC RM (3/27)	Alan Beam	What is the problem we are trying to solve? How does the current plan fall short? How can we answer that since there is no monitoring plan to measure effectiveness?
16				Plan is written to obscure its purpose. By requiring specialists for reports, the County acknowledges that the landowner is incapable of interpreting the ordinance; If going to require a wetland specialist, at least have them determine the functions to protect and the appropriate buffer
16				Standard buffers make little sense; County says using BAS from Ecology, but Ecology science does not identify the problem to be addressed; each type of contaminant (people, livestock, turbidity, water pollution) has a different effective buffer width; Sedimentation- 16-66 feet; phosphorus- see sedimentation; nitrogen- 50% at 10 ft., 75% at 92 ft., and 90% at 367 ft.; erosion control- physically block livestock; habitat- other buffers expand vegetation and therefore habitat
16				In all cases, you are talking about a regulatory taking and in most takings, the county is required to buy the property. Consider not taxing the portion of the property encumbered by buffers and setbacks.
16	<b>19.100 Introduction</b>	Letter/ BoCC RM (3/27)	Alan Beam	<b>.110 Applicability</b> - [no comment, but bold emphasis added to portions of a copy of section]
16	<b>19.300 FWHCA</b>	Letter/ BoCC RM (3/27)	Alan Beam	There are no wildlife designated areas on the map, which is good because the definition fits the entire county (.325)
16	<b>19.200 Wetlands</b>	Letter/ BoCC RM (3/27)	Alan Beam	By using the DOE Wetland Rating System, allows the state to revise the state and county requirements without further review; downloads of Ecology publications are difficult to find
17	<b>General</b>	Web	Doug Lyons	The CAO seems to be a total overreach and violation of private property rights both state and federal.
18	<b>19.100 (Agriculture)</b>	Web	Josh DeWitt	<b>.125</b> agriculture exemption- requiring farm plans and BMPs for the last five years as a prerequisite to continued use exemption has significant implications. With adoption of new Ag code last August, these were voluntary. How many farms already had a plan/BMPs in place five years ago? What if they implemented then since the Ag Code was adopted? What if they are adopting them now? Spirit of exemption is to allow continued use without negative impacts, and would be better to encourage transition to farm plans/BMPs. Want to protect critical areas but protect existing farms. Proposed alternative language: "Pre-existing and ongoing agricultural activities on lands containing critical areas. For the purpose of this title, "existing and ongoing" means that the activity has been conducted and/or maintained within the past five years and is currently under a farm management plan or other best management practices not resulting in a net loss of critical area functions and values."
19	<b>19.100 (Agriculture)</b>	Web	Scott Hall	<b>.125 Exemptions</b> - Pre-existing and ongoing agriculture- "bright line" of five years cannot be supported as the federal regulations (exemptions to 404f of Clean Water Act pre-empt local authority to establish regs that would interfere with federal exemptions) do not specify a time frame associated with "ongoing" use, nor do they specify that any particular activity must have been engaged in within a set time frame. Federal regulations refer to the operation being maintained such that extant hydrological regimes do not need to be altered to bring an area back into agricultural production (with no time frames on lying fallow); Proposed alternative language: "For the purpose of this title "existing and ongoing" means activities associated with farming operations conducted in accordance with the exemptions found in applicable federal regulations, and specifically including those federal regulations relating to wetlands. More specifically, exemption from this title is dependent on adhering to any requirements or conditions for exemptions found in federal regulations governing agricultural uses on lands that contain critical areas, including wetlands, as defined by this title."
19	<b>19.150 Definitions</b>	Web	Scott Hall	<b>.165 Best Management Practices</b> - new paragraph D is redundant to A, and should be deleted;
19				<b>.265 Draining</b> (related to wetland)- as used here, "draining" is not consistent with the meaning found in federal regulations
19				<b>.395 Grazed wet meadows</b> - delete, cannot be recognized as separate from other recognized agricultural uses
19	<b>19.200 Wetlands</b>	Web	Scott Hall	<b>.200.225(B)</b> Agricultural restrictions- remove all mention of grazed wet meadows (see above); wording of section is generally confusing; current language states "wetlands shall be avoided by at least one of the following methods" rather than "loss of wetland functions and values shall be avoided by at least one of the following methods".
20	<b>General</b>	Web	Robert Dukes	How are the property owners to be compensated for the "taking" of our land//use of our land, for this ordinance?

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21	<b>General</b>	Letter (4/3)	Brittany Gordon	Letter of support of Draft CAO- working group meetings provided a great opportunity for state agency representatives to discuss suggested updates; updates improve the consistency of the CAO with current state regulations, Best Available Science, and state guidance; Espeically support proposed updates to Wetlands (19.200), Fish and Wildlife Conservation Areas (19.300) and Special Reports (19.700).
22	<b>19.100 Introcution</b>	Email (4/3)	Jon Brand	.125E- does this exemption for normal and routine maintenance or repair of exising structures in the right of way include bulkheads/rockeries associated with County Roads?
22				.130A could routine repair and maintenance of County roadways constructed before intitial CAO be considered a nonconforming use? If so, consider saying it.
22				.130B Danger Tree- Assuming if danger tree removed from right of way, no replanting is required. Correct?; What is a danger tree evaluation permit and who administers it? Does it apply ot trees in right of way or cases where trees on private property threatens roads?
22				.135F Variances- Would it be appropriate to include County roads with public utilities? There are public service obligations and the need to reasonably accommodate roadway infrastrucure.
22				.145 Special use review- When did the tribes achieve external authority status? When would review by a tribe be necessary?
22				.160D Application requirements- Are there fees assessed against PW for review or geotechnical reports?
22				.165 Inventory (map)- Is a site specific analysis performed by others subject to the same review and approval as those completed by project proponents?
22				.170E- Imminent and substantial dangers- assuming this could relate to public roads
22	<b>19.150 Definitions</b>	Email (4/3)	Jon Brand	.230 Critical Facilities- should include arterial roadways
22				.235 Danger Tree- would a roadway qualify under this defintion?
22				.325 Fish and wildlife habitat conservation areas- what about drainage ditches located in the right of way? Are these not included in the definition?
22				.350 Forest Practices- how do road and trail construction fit into the forest practices discussion? Please clarify.
22				.365 Geologic Assessment- grammar issue
22				.415 Habitats of local importance- have these been formally identified?
22				.450 Landslide hazard areas- Is there an inventory of landslide hazard areas? Same as geohazard areas shwon on parcel maps?
22				.475 Normal maintenance- how about repair and routine maintenance of rockeries, buklheads and other roadway infrastructure?
22				.505 Priority habitat- have these areas already been identified and mapped?
22				.510 Priortiy species- thought it was the feds that did listings
22				.520 Public project of significant importance- where is this refered to in CAO?
22				.530 Public utility- transportation is listed as a public utility
22				.635 Streams- include roadside ditches
22				.665 Utilities- the definition of public utility includes transportation but this doesn't. Why?
22				.710 Wetlands of regional significance- have these been identified and mapped?
22	<b>19.200 Wetlands</b>	Email (4/3)	Jon Brand	.215B- Delineation of wetland boundaries- is DCD available for the delineation of minor wetlands located in the right of way?; verification by department requires a charge by DCD?
22				.220E- Table- Other measures recommended for protection: no additional surface discharges to wetland or its tributaries- this may be the only option.
222				.220B.2.a.5- Infiltration of stormwater where soils permit- assuming that on-site wastewater systems and stormwater infiltration in buffers is not allowed when wetland categories do not allow additional discharge?