

<i>This "Summary Response" matrix provides a compilation of comments, by topic or code section, and the County's Response.</i>			
<i>Comment # may be used to reference back to the original comment, either as summarized in the "Comment Summary" matrix, or the original</i>			
<i>Comment submission (email, letter, web).</i>			
Critical Areas Ordinance (Title 19) Public Comment on Draft (3/1/17-3/31/17)			SUMMARY RESPONSE
Topic	Comment #	Summary	County Response
General- Typos		Numbering, spacing, grammar,	<i>Comments noted.</i>
General	1,11,14	Recommend rewrite / one-year delay	Comments noted.
General- Property rights	1, 16,17, 20	Ordinance restricts development; private property owners should have more latitude to develop their property; Regulatory taking- County required to buy property; consider not taxing portion of the property encumbered by buffers and setbacks; total overreach and violation of private property rights	The CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regularoty or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
	14, 16	Problem intended to be solved is not stated; How does current plan fall short?	State law requires that we protect the functions and values of the five critical area types identified by the legislature. We are required to periodically update the code by incorporating new BAS since the last update. Case law recognizes that critical area protections are necessarily a scientific process that needs to be reviewed and updated as new science becomes available.
General- Buffers	1, 7, 14, 15, 16	Restricts development, be more specific geographically or by what we are trying to protect; disagree that buffer provide measurable protection; failure to treat highway stormwater runoff is the greatest impact, but restrictions are placed on homeowners; standard vegetated setbacks of hardscape for protection of water quality, but no further buffers; uncertainty results in inaction (economic impact); standard buffers do not make sense, need to be specific to the type of contaminant; buffers are a discretionary area of land that is taken by the government through administrative process (not science)	The buffer widths set forth in the proposed revised ordinance take into account the protection of a wide range of functions and values (water quality, water quantity, fish and wildlife, etc.) and not just one over another. BAS says that it would be best that each buffer be determined on a site-by-site basis, but GMA recognizes the practical limitations of doing so and allows this approach where the base buffer is set and can be modified as necessary.

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General- Case Law (Swinomish)	7,11,14	County may depart from BAS if it provides a reasoned justification for such departure; use of established baselines/benchmarks; "creatures warrenting protection no identified, therefore no baseline populations to measure progress of required "Water Quality Monitoring Program" or "Salmon Habitat Monitoring Program"; removes Ecology's "out of compliance" threat	<i>Swinomish</i> and subsequent case law, including Growth Board decisions, have confirmed that where a jurisdiction departs from BAS it must have substantial evidence in the record justifying the departure and must analyze the risks to critical area functions and values specifically giving consideration to the scientific, technical or legal factors. Further, not using BAS does not relieve the County of still protecting all critical area functions and values. If you any evidence specifically supporting a departure from BAS in a particular area, we welcome your submission. To date, the County has received no supported evidence of a need for any departure. Benchmarks are not required unless we are engaged in an adaptive management program, which was the case in <i>Swinomish</i> . Because we are not currently proposing to depart from BAS, there is no requirement for benchmarks. Further, water quality is not the only funtion and value the county is required to protect.
General - Case Law / Constitution	11,14, 15	<i>Presbytery of Seattle v. King County</i> ("3-prong due process test"); <i>Citizens Alliance for Property Rights v. Simes</i> (overreach); WA Supreme Court (Columbia River Gorge case) (appeals/revoking permits after issued); <i>Lucas; McCready</i> (access); 4th Amendment , Constituion Article 1 sections 3 and 16 (property owner decides highest and best use)	This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. This included a review of <i>Presbytery</i> and subsequent case law. <i>CAPR v. Sims</i> imposes the nexus and rough proportionality requirements already required by Washington law.
General- Best Available Science	7,14, 16	No "science support document" found to support changes in buffers; no Western Washington science supporting buffers are needed or effective; (Spromburg, 2015) is only pertinent, local study; Ecology science does not identify the problem to be addressed; Ecology docs are difficult to find	Case law holds that jurisdictions are not required to explicitly analyze or summarize BAS in a discrete document. However, Kitsap County has provided a "Summary and Bibliography of Best Available Science", which serves as a support document for changes made in this update. The resources listed in that document are those published since the 2005 update, and serves as an addendum to those documented in 2005. The CAO must protect "functions and values", of which water quality is but one.
General- Mitigation	11, 15	Justification needed for mitigation if critical areas are important ("protect" and "preserve" in Policy goals);Why is a mitigation plan required for a proposal to use private property? What kind and who gets to decide?	The planning goals of the Growth Management Act (RCW 36. 70A. 020) include both Environment and Property rights. In order to find balance amongst these two goals, of which neither has priority over the other, mitigation provides opportunity to allow for reasonable use of a property while protecting functions and values to the extent current industry practices and our understanding allows. The mitigation required to balance these two goals is commensurate with the site-specific development impacts. Qualified specialists for that particular field, as defined in this Title, may be required to assist in identifying the current, site-specific conditions, what impacts will occur to various functions and values, and how to best mitigation for them.

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General- Effectiveness of CAO	7,14, 16	No harm proven from existing structures inside what are now deemed critical areas; 95% of Kitsap in mapped critical areas and are therefore nonconforming without harm proven or measurable benefit; 2005 promise of annual reviews of effectiveness; Cannot determine if current plan not working without monitoring	BAS shows scientifically supportable evidence for buffers of the ranges proposed to protect the full range of functions and values of the identified critical area. We have not been provided with evidence actually showing no harm. If you have any such evidence specifically supporting a departure from BAS in any particular area, we welcome your submission.
General-Maps	2	Difficulties viewing only portion of map	<i>Comment noted.</i>
	3	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.	<i>No Action.</i> Stream map and type are designated by the Washington Dept. of Natural Resources. A field assessment would be required, either as part of a watershed assessment, or as part of a permit-related, site-specific evaluation by a qualified professional. That is outside the scope of this update; Best Available Science does not support 50 ft. riparian buffers for Type F (fish-bearing) streams. Site-specific analysis through a Habitat Management Plan could recommend a reduced buffer with adequate mitigation.
	15	Protections should be applied regardless of permit status (which would have required survey to verify map); If the County is not going to impose common restrictions to all critical areas, the regulations are improperly applied	The maps are, indeed, only intended to provide probable location of critical areas (WAC 365-190-080). In all cases, the regulations provided in this Title apply to what is on-the-ground, regardless of map or permit status. For example, one could not legally fill in a wetland simply because it wasn't on the map and no permit was sought. Enforcement actions under this Title would still be applicable.
	13	Not all critical areas area shown on the "building limitations map" which is misleading	<i>Agree, in part.</i> Each critical area should be a stand-alone map, except in the case of the online parcel search maps. To provide them all on one map would result in hidden features (overlap), which is equally misleading. In the case of the online parcel search, all critical area "limitations" will be provided as a common mapping Theme, from which each critical area type may be selected/unselected, as desired.
19.150 Definitions			
General	15	use simple, common language for definitions ("detention facility", for example, has other meanings)	The terms used are a combination of technical terminology in common usage, and descriptive words used to clarify elements of the ordinance and are derived from the review of best available science. In some cases, the term may also be developed in accordance with state and federal case law on the subject.
.100 Adjacent	15	Need to better define "adjacent" (and ensure it has the same meaning throughout each chapter and without referencing back to itself)	<i>Agree.</i> Should not reference definition back to code. <i>Propose clarification:</i> "Adjacent means the area containing the critical area in question for the development proposal and its largest potential buffer or setback. This area is for review purposes only."

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.140 Aquifer recharge area (and .215 Critical...)	15	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?	There are three definitions at play: "Aquifer recharge" (describes the physical process), "Aquifer recharge area" (describes the areas where the process occurs), and "Critical Aquifer Recharge Area" (describes the areas where the process occurs AND are at risk to contamination due to factors such as proximity to potable water sources and soil types). This Title regulates certain uses within identified "Critical Aquifer Recharge Areas" only. They are identified and mapped as part of the currently adopted CAO, per WAC 365-190-100.
.150 Aquitard	15	How is this practically determined and what evidence is required to support the determination?	The Hydrogeologic Report (19.700.730) is to include a "description of underlying aquifers and aquitards, including water level, gradients and flow direction." Further, "this report is to be prepared by a professional geologist/hydrogeologist or by a soil scientist with a strong background in geology."
.155 Bank Stabilization	15	sea walls and rock rip-rap would be appropriate under this definition	<i>Correction</i> . "...and open water shoreline..." was deleted from the current Title for this draft but not indicated. Marine shorelines are now regulated under the Shoreline Master Program, KCC Title 22.
.160 Best Available Science	15	Just because WAC cannot get it right does not mean the County should be exempt from a proper definition	<i>Comment noted.</i>
.165 Best Management Practices	19	new paragraph D is redundant to A, and should be deleted.	<i>Revise.</i>
	15	How determined? Where documented for implementation?	Best Management Practices are standards specific to the industry being applied. For example, Best Management Practices is often used to describe stormwater control on a development site, but may also be applied to agriculture, wetland mitigation, geological mitigation, etc.
.175 Buffer	15	"Buffer" is a discretionary area of land surrounding a "critical; area" established by the County using general criteria addressing "functions and values" (as defined by government); size of a buffer not determined by actual scientific process or actual site conditions but is a generally established distance determined by the County. Buffers constitute additional land area that is "taken" by government through administrative process and imposes stringent non-entry and non-use regulations on the property owner.	This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
.200 Compensation	15	Compensation should refer to "just compensation", and another term should be used here	<i>Comment noted.</i> Compensation, as defined for this Title, is used in the context of replacement of critical area functions (compensatory mitigation).
.220 Critical areas	15	Essentially includes entire surface area of Kitsap County; not well defined	The definition of critical areas would not and does not include all lands of the entire Kitsap County. The definition is found at RCW 36.70A.030 and is guided by WAC 365-190-030 through 196.
.235 Danger Tree	14, 15	WAC listed refers to logging and CAO expands this to include buildings, arborists, permits, etc.; owner has right to remove	The reference to WAC 296-54-505 is indeed a reference to definitions in a logging operations safety standards chapter. This is a state definition for "danger tree" and is used to help describe such a tree. In addition, local review and approval, especially in critical areas, is applied in many jurisdictions.

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.245 Department	15	Does that mean any and all employees of the Department?	Yes, in their respective roles, responsibilities, and authorities.
.260 Director	14, 15	"authorized designee" needs to be clarified and written with time/event specificity to access private land; What is the process and qualifications?	The authority granted to the Director and DCD is a proper delegation and has been limited by appropriate sideboards.
.300 Exotic	15	What is the baseline for exotic; record used to support ?	This is another term for "invasive species" and for plants is described in RCW 17.10, WAC 16-750 (Noxious weed list) and 752 (quarantine list); invasive animal species are managed by WDFW.
.320 Filling or fill	15	This includes virtually any material placed on the surface of the land by the property owner including beauty Bark and driveway gravel. Is that the intent?	This is the definition. The application of fill amounts determines the permit requirements, either under this Title or other County code.
.325 Fish and wildlife habitat conservation areas	10	Update per WAC	<i>Revise.</i>
	14	No criteria or benchmarks to designate, violates <i>Sims</i> and <i>Swinomish</i>	These definitions are taken from state regulations. Benchmarks are not required here under <i>Sims</i> or <i>Swinomish</i> .
.350 Forest Practices	15	Implies cutting of brush is under the provisions of forest practices	This does not apply to normal yard maintenance.
.360 Functions and values	14, 15	Requires specificity and benchmarks per <i>Swinomish</i> ; includes educational and recreational values which is a taking to be used for government exploitation.	Benchmarks are not required here under <i>Swinomish</i> . The terms "functions and values" is a term of art that is sufficiently defined and capable of being understood with reference to BAS; This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
.385 Geological Assessment	15	Are employees reviewing required to have equal qualifications as the person preparing the report, who is liable if the product is not correct? If County contests findings and proven wrong, what liability does the county have?	County staff review applications and reports for consistency with County code.
.410 Habitat Management Plan	15	Why required to enhance or improve wildlife habitat on private property?	HMPs, when required, are to determine necessary measures to "enhance or improve" habitat conservation on a proposed development site, and is a means of demonstrating required mitigation sequencing (avoid, minimize, compensate).
.415 Habitats of local importance	14,15	No criteria or benchmarks to designate, violates <i>Sims</i> and <i>Swinomish</i> ; Who makes this determination?	<i>No Action</i> . These definitions are taken from state regulations. Benchmarks are not required here under <i>Sims</i> or <i>Swinomish</i> . Kitsap County has not designated species of local importance, and this allowance would not be implemented until such time as they were adopted as such.
.420 Hazardous Substance	14,15	Only justification for buffers must require the same testing criteria in the referenced WAC; Includes CO2?	<i>Delete</i> . Is not used in code.

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.440 / .442 Impervious Surface (Setback)	14	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; would include every possible development to property; how is "predevelopment determined?	.440 is a definition of impervious surface. Development regulations will indicate how and where such surfaces are appropriate, or when infiltration, retention facilities or LID are required. The recommendation for the addition of .442 "Impervious Surface Wetland and Stream Setback", including the limitation of the setback to 25', does not meet the requirements of the GMA for Best Available Science. Functions and Values to protect go beyond just those for water quality. Site-specific conditions, functions and values are determined through special reports and other application materials.
.465 Mitigation	6, 14, 15	(A)Cannot "create" wetlands; Definition violates decisions in Koontz, Nollan, Dolan, Hawkes Co., Sackett, and, Lucas	(A)The creation, or establishment, of wetlands is an approved method of compensatory mitigation. It includes many provisions to ensure the location is suitable. While a wetland may not have naturally occurred on the selected mitigation site, development has similarly altered the hydrology of many locations. Given the appropriate soils and water inputs, these locations may now be appropriate for wetland establishment. This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property.
.500 Practicable alternative	14, 15	nexus and proportionality	This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property.
.550 Reasonable use	14, 15	Need to list relevant court cases; a true minimum needs to be defined	The reasonable use definition is intentionally broad to allow for application of case law as it develops. Further, the imposition of administrative appeals, prior to any judicial appeal, is consistent with RCW 36.70B. This revised definition is currently used by King County.
.555 Reasonable use exception	15	he 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.	This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
.565 Refuse	15	How about dead animals, wind blow tree limbs, fallen trees, and all those other things that seem to make up the real world?	Refuse is material "placed" in a critical area or buffer, including yard debris.
.595 Seismic areas	14	clarify that there are two mapped categories: severe and moderate.	This term is a definition only. Similar to other critical areas, such as wetlands, the categorization and development regulations are in the appropriate sections of this Title.

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.610 Significant tree	15	Breast height on who? Native? Location?	This term is used in 19.200 and was previously undefined. This definition and terms are industry standard and used, at least in part, by other local jurisdictions.
.615 Single Family Dwelling	15	Define "family"	Single family dwelling is defined as both attached and detached in Title 17.110
.170 Bog	10	Update	"Bog means a low nutrient, acidic wetland with organic soils and characteristic bog plants, as described in <i>Washington State Wetland Rating System for Western Washington: 2014 Update</i> (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).
.315 Fen	10	Update	<i>Update.</i> Use same reference as for "Bog"
.430 Hydric Soils	10	Update	<i>Update.</i> "Hydric soils means a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part"
.465 Mitigation	10	Update	<i>Update Per WAC 197-11-768 (mitigation sequencing)</i>
.480 Ordinary high water mark	10	Update	<i>Update.</i> The definition provided was written with the Dept. of Ecology as "department", but otherwise is consistent with WAC definitions.
.700 Wetlands, isolated	10	Update	Clarification needed on where to find the most recent definition.
.395 Grazed wet meadows	10, 19	Delete	<i>Delete (and where referenced in 19.200).</i> This is not a term used or recognized by the Dept. of Ecology or the US Army Corps of Engineers for wetland regulation. The use of emergent wetlands as part of an existing and ongoing agricultural operation is already allowed and bringing new areas into production for haying and grazing should be reviewed as a potential new critical area impact.
.495 Pond	10	Delete	<i>Delete.</i> Water bodies less than 20 acres are still waters of the state and may be subject to shoreline regulation as associated wetlands, or this Title as a wetland. The SMP (Title 22) references the wetland chapter (19.200) for development regulations of wetlands within the shoreline jurisdiction.
.265 Draining	10	Delete	<i>Comment noted.</i>
Deletions not understood	14	Lot; Non-conforming use or structure; Performance based development; Permit	These definitions are provided in Title 17 of Kitsap County Code, and do not have any additional meaning for the purposes of this Title. As such, keeping multiple locations for the same term in code risks one being updated without the other, creating potential conflict. This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property.
19.100 Introduction			

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.105 Statement of Purpose	15	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?)	As stated in 19.100.105 and RCW 36.70A.172(1), the purpose and intent of this Title is to "designate (identify) and protect critical areas". The "policies and development regulations to protect the functions and values of critical areas" are to "give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries". Further, RCW 36.70A.020 identifies the planning goals for comprehensive plans and development regulations, including the CAO. There is no priority between these goals, including property rights and the environment.
	15	(A) and (B)- Include in this statement a clear intent and commitment to protect the rights of private property as required by the Constitution and GMA, and hold those rights protected from administrative takings and other infringements under this Title.	Will consider adding a policy goal. Protection of property rights are consistent with the Constitution and state law in the implementation of this Title. The CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
	15	Where is the specific GMA reference that supports this policy (B.1)?	RCW 36.70A.010
	15	Where is the specific GMA reference that supports this policy (B.2)?	WAC 365-190-020
	15	(B.4) Exactly what are adjacent lands? Who determines that status? When is the determination made? If "adjacent" is not critical why would critical guideline apply? Do you not see this as a way to abuse the rights of a property owner?	This is a Policy Goal and is further implemented by the specific provisions of this Title. See 19.150.10,0 Adjacent definition above.
	15	(B.6)- what activities cause detrimental affect and who decides?	This is a Policy Goal and is further implemented by the specific provisions of this Title.
	15	(B.7) What authority exists for this policy? This directly contradicts provisions of the Constitution .	RCW 36.70A.010
	15	(B.9)- Is "stormwater" any precipitation falling to the ground in Kitsap County? Does this include water captured in a rain barrel?	See Kitsap County Code Title 12. Per 12.08.475 Stormwater or storm water. "Stormwater" or "storm water" means the surface water runoff that results from all natural forms of precipitation.

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	15	(B.12) Who determines impact and course of action? Could result in mitigation on another's property.	Complete applications, including any Special Reports, will provide the necessary information to determine the impacts of any proposed development activities on the critical area(s). Staff review per Title 19 and related code, including consultations as prescribed therein. On-site mitigation would only apply to the property under review. Off-site mitigation is allowed in some circumstances, through the use of mitigation banks or in-lieu fee programs. Neither of those are established without willing sellers to said programs. This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
.110 Applicability	7, 14, 15, 16	Precludes gardening or pulling weeds; no benchmarks; (D) Adds to permit requirements where there were none; wording makes it illegal to move dirt or plants without a permit; (G) buffer and setback must be restricted to the parcel in question; tighten up this section to remove permissiveness for abuse by authority	Benchmarks are not required unless we are engaged in an adaptive management program (Swinomish) or participating in the Voluntary Stewardship Program (RCW 36.70A. 700 et seq.). Because we are not undertaking an adaptive management program and are not enrolled in the VSP, there are no requirements for benchmarks. (D) Title 19 is still an overlay to other county ordinances. However, critical area-specific permits are and have been required (not new), such as the critical area variance permit. In addition, due to the change in the way DCD tracks fees, services such as critical area site visits are now tracked and referred to as a "permit". The service and/or review for fee have not changed, simply the term used to describe the service. (G) The buffer and setback only applies to the parcel in question, unless the adjacent parcel is also proposing development activity within the critical area or its buffer.
.115 Relationship to other county regulations	11	without criteria and arbitrary	<i>Comment noted.</i>
.120 Review Authority	15	Elected commissioners are the original delegated authority in GMA, not the Director or employees; make the regulation clear or do not implement at all; grants DCD authority to revoke permits already issued	The authority granted to the Director and DCD is a proper delegation and has been limited by appropriate sideboards. The provision granting authority to "revoke permits already issued" allows for the imposition of current BAS when a new application for development is submitted. All new activities are required to be reviewed by BAS as established in this Title. Propose to add clarification . "...based on review of a current application" rather than "current information".
.120 Review Authority- Time limitations	11, 14, 15	Written request time limit on applicant, but no DCD required response time (arbitrary and no criteria); authority granted to DCD violates separation of powers; 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	The authority granted to the Director and DCD is a proper delegation and has been limited by appropriate sideboards.

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.125 Exemptions- Agriculture	5, 18, 19, 20	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"; Spirit of exemption is to allow continued use without negative impacts, so it would be better to encourage transition to farm plans/BMPs; "bright line" of five years cannot be supported as federal Clean Water Act exemptions do not specify this time frame, but do refer to the operation being maintained so that the hydrological regimes do not need to be altered to bring an area back into agricultural production. Alternative language provided.	<i>Propose to add clarification:</i> " If the land is enrolled in a federally recognized conservation program, it is not considered to be idle, and continues to meet the definition of existing and ongoing agricultural activity." Case law (<i>Clallam County vs. W. Washington GMHB and WEAN vs. Island County</i>) holds that counties cannot completely exempt existing Agriculture. We must evaluate best available science and tailor any exemption to "reasonably ameliorate potential harm to the environment and fish and wildlife." The federal CWA allowing certain dredged and fill materials to be placed in to navigable waters is a separate issue from GMA's mandate to protect the functions and values of critical areas. Further, the exemption does not apply to all agricultural activities so there is not a general preemption of local law.
.125 Exemptions- Footprint or Impact	15	What is a "new" or "adverse impact", who determines / authenticates "newness"?	This exemption is further described in 19.100.130.
.125 Exemptions- Normal Maintenance	15	What are the exact "best management practices" and where are they documented so citizens may implement? What if they are not effective?	Best Management Practices are standards specific to the industry being applied. For example, Best Management Practices is often used to describe stormwater control on a development site, but may also be applied to agriculture, wetland mitigation, geological mitigation, etc.
.130 (A) Existing Nonconforming Structures	9, 11,	20% expansion statement could be misinterpreted, consider restatement; whole section is too confusing;	<i>Comment Noted</i> . Will consider revision to clarify.
	14	Requires construction to begin within 24 months, but no allowance given for time to obtain permit.	<i>Agree.</i> This language for replacing an existing structure that has been damaged was also updated in the 2014 SMP update and should be done so here as well for consistency. Propose the following (emphasis added): "Nonconforming structures which are damaged or destroyed by fire, explosion, or other casualty, may be reconstructed or replaced to configurations existing immediately prior to the time the structure was damaged or destroyed, provided the <i>application is made for the necessary permits within six months</i> of the date the damage or destruction occurred, and the <i>reconstruction is completed within two years of permit issuance</i> or the conclusion of any appeal on the permit. The reconstruction or restoration shall not serve to expand, enlarge or increase the nonconformity except as allowed through the provisions of this section."
	15	Administrative taking because it allows redefining of conditions (critical area/buffer) after the fact	Jurisdictions have broad authority in regulating nonconforming uses and structures so long as compliant with state and federal property rights. The CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.

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.130 (B) Danger Trees	7,11, 15	Why would a permit be needed?; criteria should be removed; homeowner should determine own liability	This process is not new, and the added language clarifies what is needed. A homeowner with concern about a tree on their property is to consult the County. In some cases, a photo may suffice. When it does not, the County MAY require a "risk assessment report" by a certified arborist. A "site evaluation permit" is only needed if the homeowner would rather have the County review directly. Review of such tree removal only applies to such trees in the critical area or buffer. This helps to ensure that tree is mitigated, either by leaving in place or replanting. Removal of a tree outside of the critical area or buffer would not be subject the same review.
.135(A) Variances	9	Define "vicinity" and "substantial"; Insert "minimum" before "permitted use"	Vicinity- Add "typically the surrounding properties"; Substantial- Common dictionary definitions apply when no specific one is provided in code
	14, 15	disallowing construction enjoyed by surrounding properties developed prior to ordinance may be violation of <i>Lucas</i> ; highest and best use should be determined by the property owner and that is the level the County taxes the property at	This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. This included a review of <i>Lucas</i> and subsequent case law.
	15	(A.2)Exactly how would a new owner have knowledge of actions taken by a previous owner? What this introduces is a responsibility for errors or actions through the history of a property visited on a current owner. How does that work? Exactly what law imposes this kind of burden on individuals?	The scope of variances are well established in case law and have been reviewed when deciding to maintain the existing language.
	15	Why is a "public hearing" required? What specific law(RCW) allows someone to comment on the use of another's property?	State statutes and case law allows and sometimes requires public hearings. For example, see generally chapter 36.70B RCW.
	15	"public utility" not necessarily the property owner? Has rights and priveleges superior to a/the property owner?	This Title provides for public utilities consistent with state statute and case law. For example, see generally title 80 RCW.
.140 Reasonable use exception	9	Insert "minimum" before "reasonable";	The reasonable use definition is intentionally broad to allow for application of case law as it develops. Further, the imposition of administrative appeals, prior to any judicial appeal, is consistent with RCW 36.70B.
	14	Include construction of single-family residence; "unreasonable threat" may be interpreted too broadly; Hearing examiner as final decision denies access to courts	The reasonable use definition is intentionally broad to allow for application of case law as it develops. Further, the imposition of administrative appeals, prior to any judicial appeal, is consistent with RCW 36.70B.
	15	.140 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)	The CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regularoty or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.

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.150 Appeals	14, 15	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.; Who is considered an "affected party"? Remove "by the applicant of affected party".	<i>No Action</i> . The Commissioners have authority to establish a Hearing Examiner system and the Hearing Examiner is authorized to perform these functions in accordance with state and local law and interpreting case law. For example, see chapter 2.10 KCC, chapter 36.70 RCW and chapter 36.70B. All testimony before the Hearing Examiner is recorded and is available for transcription in any judicial appeal. The "affected party" language needs to remain, as this goes to whether the appellant has standing to appeal.
.155 Notice to Title	7, 14, 15	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 authority does the County have to do this? All parcels with criticals areas need to be identified and recorded so as not to violate "equal protection under the law"	<i>Comment noted</i> . Case law allows Notices to Title under certain circumstances, which has been determined to be applicable here.
.160 General Application Requirements	14	Requiring applicant to confirm the "nature and extent of any critical area on or adjacent to the property" violates the privacy of neighbor	Certain information is required to adequately evaluate a proposed application, but does not authorize the violation of any law or rule to obtain that information.
	15	(A) Either require meeting or not, or it could be used against the applicant	This detail is provided in accordance with the intent of chapter 36.70B RCW
	15	E- Does review for completeness mean all fields all filled in, or that it is technically correct? If the later, how will the County document the qualifications of personnel?	Complete does means that all fields are filled in, but also that once reviewed by staff are determined to have all necessary special reports and information to make a determination. Completeness is determined through application of Kitsap County Code.
	15	(F) How does the applicant know what is required when there are so many "at the discretion of the department" or "as determined by the Director"? Do not refer back to "recommended" initial conference.	The authority granted to the Director and DCD is a proper delegation and has been limited by appropriate sideboards.
	15	(G)If the County locates critical areas "generally", how is an applicant supposed to create a site plan? County survey or special reports are requiring the property owner to first declare portions of property unusable.	WAC 365-190-080 states that jurisdictions "should clearly state that maps showing known critical areas are only for information or illustrative purposes". Site-specific special reports confirm the location, and also the functions present requiring protection.
	15	(H) If environmental review has previously been completed, why is a new review required?	Environmental review for the Comprehensive Plan is programatic. Individual permits or changes in zoning require site-specific analysis.
.165 Inventory Provisions	15	Protections should be applied regardless of permit status (which would have required survey to verify map); If the County is not going to impose common restrictions to all critical areas, the regulations are improperly applied	WAC 365-190-080 states that jurisdictions "should clearly state that maps showing known critical areas are only for information or illustrative purposes". In all cases, the regulations provided in this Title apply to what is on-the-ground, regardless of map or permit status. For example, one could not legally fill in a wetland simply because it wasn't on the map and no permit was sought. Enforcement actions under this Title would still be applicable.

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.170 Enforcement	14, 15	Must state a warrant must first be obtained by the county employee	This provision only authorizes entry with consent or with "recourse to the remedies provided by law to secure entry." Warrants are therefore already required. Provisions of this section have been reviewed and found compliant with the 4th Amendment of the US Constitution and Article 1, Section 7 of the Washington Constitution.
	15	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?)	The County is authorized by law to enforce its regulations in compliance with the state and federal law. This enforcement section has been reviewed and determined to be compliant. Provisions of this section have been reviewed and found compliant with the 4th Amendment of the US Constitution and Article 1, Section 7 of the Washington Constitution.
	15	(F) 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.	This section is not allowing the County anything more than is otherwise allowed by law, but rather explains that the County's enforcement is not limited to this Title. <i>Propose clarification:</i> "Property owners shall have all rights and responsibilities to defend as provided by law."
19.200 Wetlands			
.205 General- Purpose and Objectives	15	If there is no accurate inventory, how is no net loss achieved? Benchmark to measure and who is responsible?; Who has authority to determine when public issues could "arise"?	Special reports determine site-specific, current conditions. Wetland mitigation reports are to include the details of what, when and who will monitor. These are purpose and objectives, specifics are in the development regulations.
	15	C- "holder" vs. "private property owner"	<i>Agree, in part.</i> "holder" to be changed to "owner". The CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
	15	E- By definition (and 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.	The county does have authority to regulate public health, safety and welfare subject to state and federal law. This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
	11	No baseline to establish if a wetland was disturbed or not; Wetlands only of value to wildlife which uses them;	Baselines or benchmarks are not required unless we are engaged in an adaptive management program. Because we are not currently proposing to depart from BAS, there is no requirement for benchmarks.

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General- Special Reports	14	Special reports for proposal in wetland or buffer- buffer should not be "largest potential width"	Buffers help to maintain wetland functions. This Title applies to critical areas and their buffers. Therefore, any development proposal that occurs within the area of the largest potential buffer of the wetland would need to demonstrate 1) that the development proposal is or is not within that regulated area, and 2) what the site-specific buffer should be.
General- Concern	11	Opposed to what is happening and the destruction of wetlands crucial for survival of many of our wildlife	<i>Comment noted.</i>
.215 Wetland Review Procedures	15	How will the applicant know to submit a report if the wetland is not already mapped?; Does the department conduct delineations for SFRs?; Reviewer qualifications and liability	information provided in application and/or review of other factors such as soil types may indicate a wetland and the department would then ask for further investigation. For SFR's the department may conduct this delineation
	15	Expedited approval- how proper; expedited review- doesn't that bump other projects?	Approval may occur quicker if buffer reductions do not need to be reviewed and considered; expedited review is not always available, depending on staffing availability.
	15	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?	The conditions of any previous permits would be on record when any future permits are requested. Otherwise, no monitoring is conducted beyond what is established in a wetland mitigation report.
.225 (F) Trails	4,8	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; How many trails are enough in Kitsap open spaces?	<i>No Action</i> .The development standards for trails apply to both public and private lands to minimize the impact to critical areas. These standards are recommended by the Department of Ecology and other agencies, and are consistent with standards previously adopted for the County's Shoreline Master Program (Title 22- SMP). Additional standards could be considered by the County Parks Department during a periodic update to the Parks, Recreation, and Open Space Plan (PROS).
.210 Rating System	16	Using the Ecology Wetland Rating System allows the state to revise requirements without further review	The Wetland Rating System provided by the Dept. of Ecology is an industry standard, developed through extensive literature review and field calibration. RCW 36.70A.175 requires jurisdictions to utilize the wetland delineation method adopted by Ecology (in this case, the federal wetland delineation manual). While Kitsap County is not required to use Ecology's wetland rating system, developing a stand-alone method that would demonstrate equal protection of wetland functions and values would likely be economically prohibitive.
	15	Without specific inventory of wetlands and definitions of boundaries, this is a declaration of intent to future action. ; Why are they here if in manual?; why aren't mapped wetlands already classified?	RCW 36.70A.175 requires the delineation of wetlands in accordance with the manual adopted by the department of Ecology; The rating scores are provided in code to help describe the buffers and other development regulations presented in this Title; classifying all wetlands on the mapped NWI would be cost prohibitive at that scale and assumes access would be granted.

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.220 Wetland Buffer Requirements	7,14	Justification for reductions?; Ecology does not define, in measurable terms, the chemical risk to wetlands or provide creative solutions; Replace section with 19.150.422 recommendation	The wetland guidance documents provided by the Department of Ecology support and recommend these reductions (and increases). Guidance from state agencies constitutes Best Available Science, per WAC 365-195-905. The recommendation for the addition of .442 "Impervious Surface Wetland and Stream Setback", including the limitation of the setback to 25', does not meet the requirements of the GMA for Best Available Science. Functions and Values to protect go beyond just those for water quality.
	14	Setbacks- delete 19.200.220E, redundant to buffers and fencing (C and D)	No action. 19.200.220E addresses stormwater, whereas C addresses Road/Street Repair and Construction, and D addresses Land Divisions and Land Use Permits.
	15	We are introducing a complete new series of buffer rationales without first identifying what those regulated limitations are. Exactly how is the applicant /property owner supposed to know when a "habitat assessment" report is required?; what is width averaging and how is "adverse impact" determined?	This is not a new section. The habitats and species are discussed in 19.300. ; Buffer averaging standards are described in this section.
	15	What does "fully stabilized" site mean in regards to temporary fencing? Doesn't this require creating a disturbance to prevent a disturbance?	Fully stabilized means that construction, landscaping and stormwater controls have been fully implemented. Fencing prevents trampling or accidental intrusion of sensitive vegetation and other habitats where signage may not be sufficient.
.220 Buffers- Tables	15	If information provided in tables are in the referenced documents, how would an applicant using this Title know if they are revised? Are these land uses the "upper limit" with potential for reduction?	The certified wetland biologists conducting these delineations and classifications are kept apprised of updates from the state on such changes in methods, and often provide comment to the state on such updates. Some buffer reductions are allowed from "high intensity land uses" recommendations down to "Moderate land use" recommendations (19.200.220(B)(2)(c)).
.220 (B) Administrative Buffer Reductions	10	Ecology guidance/BAS does not support general admin. Buffer reductions, except for buffer averaging	General administrative buffer reductions are allowed based on site specific information and are accompanied by specific mitigation measures prescribed by certified wetland biologists appropriate to the site and proposed activity that prevent a net loss of function.
	15	If buffers can be administratively reduced, how does BAS support it?	General administrative buffer reductions are allowed based on site specific information and are accompanied by specific mitigation measures prescribed by certified wetland biologists appropriate to the site and proposed activity that prevent a net loss of function.
.220 (B)(1) Buffer Averaging	11, 15	How did tree protection rules come about? Too restrictive	These provisions apply to trees within a wetland and its buffer, as they provide important functions for habitat and hydrology (drip line).
	14	Buffers and averaging- delete entirely; averaging is strictly a punishment, does not benefit wetland, and drives up housing costs	Buffer averaging is a means to allow reasonable use of the property when the recommended buffer would otherwise not allow the development to occur due to lot size or topography.

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.215 Single Family Wetland Certification	14	Replace area reviewed with "100 feet" from "250 feet" to be consistent with well and drain field requirements; do not allow for buffer width modifications and limit "standard buffer" to 19.150.422 recommendation (25').	This certification process is required "prior to issuance of a building permit, site development permit, or on-site sewage system permit...". The recommendation for the addition of .442 "Impervious Surface Wetland and Stream Setback", including the limitation of the setback to 25', does not meet the requirements of the GMA for Best Available Science. Functions and Values to protect go beyond just those for water quality. Site-specific conditions, functions and values are determined through special reports and other application materials.
	15	Stating that the default (standard) wetland buffer is 250 feet surrounding the wet land; Does the County not recognize that this determination, administrative in taking is a major violation of Constitutional protections of private property	This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
.250 Mitigation- Create/Enhance	6,7, 14, 15	Cannot compensate for wetlands by creating where one does not exist, recommend deleting; How can we have "enhancement" when no net loss is required by GMA? ; Purpose cannot include "increase" or "enhancing"	The creation, or establishment, of wetlands is an approved method of compensatory mitigation. It includes many provisions to ensure the location is suitable. While a wetland may not have naturally occurred on the selected mitigation site, development has similarly altered the hydrology of many locations. Given the appropriate soils and water inputs, these locations may now be appropriate for wetland establishment.
.250 Mitigation- Ratios	10	Bogs and Wetlands of High Conservation Value, replace "case-by-case" with "Not considered possible", and "6:1 Rehabilitation" to "Case-by-case".	Revise.
	15	What is the science behind these ratios? What reference to Kitsap history and the actual regenerative ability of natural resources has been factored into this Title?	The Washington Department of Ecology provided BAS in the guidance Appendix 8-C (Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System, 2014). Site-specific flexibility as BAS is built into this Title through development standards and demonstration through special reports.
.250 Mitigation- Sequencing	15	Who monitors and determines corrective measures?	The wetland mitigation plan will determine these details.
.250 Mitigation- Incentives	15	First the County is in the position of deciding 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. Is this not a significant conflict of equal application of the law and a violation of Constitutional protections?	This is not a conflict, but merely an acknowledgment of an opportunity already available through state law, chapter 84.34 RCW.
Shorelines	7,10, 14	Docks should not be deleted because could apply to smaller lakes and wetlands; Remove "shellfish" from (D) Purpose	Revise . Agree with comment regarding retaining "docks"; <i>No action</i> . The County recognizes that shellfish are protected primarily through the Shoreline Master Program (Title 22). However, upland impacts within the watershed can affect water quality and therefore shellfish beds. These statements are simply the purposes of this Title and do not necessarily imply direct regulatory oversight.

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.210 (B) Exemptions	10	Add conditions for small Cat. III and IV wetlands, per Ecology guidance	<i>Revise.</i> The conditions for exemptions to small Category III and IV wetlands will be added. The sizes of such wetlands which are currently in 19.200.210(B), would be best suited in a separate sub-section describing such wetlands and the conditions for exemption.
.225 (B) Agricultural Restrictions	10, 19	Remove "grazed wet meadows" sentence; avoidance of loss of functions, rather than avoidance of wetlands	<i>Delete.</i> This is not a term used or recognized by the Dept. of Ecology or the US Army Corps of Engineers for wetland regulation. The use of emergent wetlands as part of an existing and ongoing agricultural operation is already allowed and bringing new areas into production for haying and grazing should be reviewed as a potential new critical area impact.
	14	If wetlands so valuable, why are livestock ponds exempt?	Existing and ongoing agriculture is provided with exempt status. New or expanded agricultural uses would need to meet current development standards of this Title.
	15	What manner of proof to demonstrate activity within the last 5 years? Level of activity?	See Grazed Wet Meadows in 19.150. This provision of five years is recommended for deletion.
.220C Fencing and signs	14	Delete buffer references; place construction fences, etc. 10 feet from wetland during construction	This does not conform to current BAS.
.220(D) Land Division and Land Use Permits	14	Encumbrance should be limited to critical area, not buffer; directly conflicts with Comprehensive Plan Reasonable Measure for maximum lot sizes in urban areas	To the contrary, this provision ensures that new lots created by subdivisions will be buildable without resorting to variance procedures.
	15	Once again, in order to gain use of some part of their property, the owner must first surrender some portion of that property, as determined by the department, and forsake any further use or entry into that land. In addition, by so agreeing, the owner willingly reduces the value of the property and opens himself to future additional restrictions as may be determined by the department. Please identify the specific provisions of the Constitutions that delegate this authority to the State or the County.	This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law. <i>Propose amendment</i> : replace "dedicate" with "permanently preserved".
.225E Additional Standards- Stormwater	15	How is the property owner supposed to know what this (increase rate of flow) means and implications without a "finding" by the department?	KCC Title 12 includes these provisions and this would also be addressed by a wetland scientist as part of addressing the site plan, should discharging into a wetland be the best approach.
.225(G) Additional Standards- Utilities	15	(F.2) If a utility corridor is an easement through private property for which a notice to title has been imposed, how does the easement get approved? Maintained?	This language does not allow utilities to do anything on private or public property without owner authority (e.g., lease or easement negotiated with the owner). It is intended to merely regulate activity in wetlands or their buffers as noted.
		(F.3) how is digging to allow sewer/septic allowed, but not planting a non-native bush?	Comment noted. Clarification may be necessary. Intent was to allow for sewer, but septic only for "reasonable use".
	15	(G) Parks on public lands only with some authorization process? If not, this is a different set of rules for public vs. private.	This section is subject to the special use review of KCC 19.100.145 to ensure the critical areas are still being protected. Consider clarification that this apply to passive recreation, not sports fields or motorized activities.
	15	(F.5) "department may require"- under what circumstances?	Comment noted. Clarification may be necessary to say "...additional mitigation measures as determined through a wetland mitigation plan or special use review."

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.225C Additional Standards- Road/Street Repair	15	(C.1)What does this mean? Too subjective and open to department determinations without recourse.	Reasonable and practicable alternative is defined in this Title and must serve multiple properties whenever possible to reduce impervious surface and crossing of critical areas.
	15	(C.2) Public vs. Private. What applies to one should apply to all.	This only applies to publicly owned right-of-ways where a need for such access has been determined. This provision is encouraging multiple beneficial uses from a single footprint, therefore reducing the overall impact to the critical area or buffer.
	15	(C.3) How about "as necessary to maintain roads and streets to the standards established for such"	Comment noted.
	15	(C.4) 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?	This provision only requires mitigation to be implemented as required in a mitigation plan. A mitigation plan would not be required for repair and maintenance of a road that is not expanding the footprint. Mitigation Plan requirements are in 19.700.715.
.225(H) Additional Standards- Parks	10	Utilities and Parks- add utility's responsibility to ensure all other required state and federal approvals have been obtained	<i>Comment Noted.</i> This would apply to any individual or entity seeking to develop in a critical area or buffer. A broader statement to this effect would be appropriate in 19.100.
19.300 FWCA			
.305 Wildlife corridors	7,8, 14	Wildlife corridors (Credibility? Proof of migratory wildlife within Kitsap County); Habitat corridors (Addressed?); Purpose (D) added without underline indication	<i>Correct.</i> (D) This is an addition and the lack of underline was an oversight. <i>No Action.</i> This is the general purpose section, so identification of specific species or requirements would be inappropriate here. Benchmarks are not required here under Swinomish.
.315 Development Standards	15	How is "known area" determined? How is the buffer maintained when natural causes may be play? How does a property owner know when an HMP is required?	Known areas are those identified on the maps and database for Priority Habitats and Species, or others as provided for in 19.300.310(B)(3). Habitat Management Plans allow for adaptive management due to natural causes. HMPs may not be required if the habitat or species recommendations only include items that can easily be conditioned in the permit, such as timing of construction.
.315(D) Development Standards- Stream Crossings	15	(D.1) 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?	Stream crossings are reviewed by DCD staff in consultation with WDFW biologists and/or engineers to determine the best location to avoid impacts (Water Crossing Design Guidelines, WDFW 2013). Culverts on private property are not under a requirement for replacement like state culverts currently are.
	15	(D.2) 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?	Applies to those water bodies meeting the criteria for Type F streams with salmonid habitat, unless other alternatives provided in a HMP. Any stream with documented salmonid use would be classified as such, but presence/absence is not one of the criteria for defining a Type F stream.

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	15	(D.3) 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.	This provision is about finding a balance between building appropriately engineered structures AND providing for habitat connectivity "unless no other feasible alternative exists..".	
	15	(D.5)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?	Lots are not permitted to be platted without access easements where necessary.	
.315E Stream Relocations	15	E- 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? Where is the science and best engineering practices that support this effort?	Stream relocations are often a means of watershed restoration, having been prioritized, vetted, studied and engineered for hydrological and habitat needs. Many stream relocations have occurred throughout Washington State and Kitsap County. A search on the Habitat Work Schedule (http://hws.ekosystem.us/), the state's salmon recovery project database, brings up 111 such projects, including Chico and Clear Creeks.	
.315(F) Pesticides, Fertilizers and Herbicides	15	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?	The application is to be applied by a licensed applicator in accordance with the safe application practices on the label of EPA approved substances for use in these sensitive areas.	
.315(A) Buffers	15	What if the "buffer" is not natural vegetation area when the County defines it. Who is responsible to make it such? Dealing with invasives? Who pays?	The phrase "shall remain" indicates that active planting is not required for existing, degraded buffers, unless part of mitigation. In the case of required mitigation, the specifics of who monitors, etc. are described in the Habitat Management Plan / Vegetation Plan.	
	15	(A.2)How many County staff are dedicated to establishing and monitoring these buffers? Does OHW apply to lakes at the 100 year rainfall level or just day-to-day measurements?	Monitoring, when required for a special report such as a Habitat Management Plan, is the responsibility of the landowner. Depending on the requirements of the specific plan, this may be annual reports for a certain period, completed by either a specialist or, in some cases, the homeowner. OHWM is specifically defined in this Title per RCW 90.58. 030 and 77.55.011.	
	15	(A.5) Science to support 25' setbacks at tops of ravines? How determined?	Ravines are essentially steep slopes. This 25' setback is consistent with those for 19.400.	
	15	(A.7)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?	This section is about the long-term protection of buffers through identification on the site plan and Notice to Title.	
			(A.6) How is the Channel Migration Zone identified and defined?	Channel migration zones and their identification are defined in this Title and WAC 173-26-020(6).
	15	(A.7) 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 reduction or variation and buffer increase just once in the document?	This section is about the long-term protection of buffers through identification on the site plan and Notice to Title.	

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	15	(A.8) 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.	The authority granted to the Director and DCD is a proper delegation and has been limited by appropriate sideboards. This CAO draft has also been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
.315 (A)(3) Buffer Reductions	9	What does WDFW consultation consist of, other than review of HMP?	Consultation may take the form of a joint preapplication meeting, staff communications, joint site visits, and/or formal review and comment of any applicable special reports.
	14, 15	Delete- already at minimum acceptable; how can you reduce if buffers already based on BAS?	Buffer reductions allow for site-specific evaluation, which is considered better science than the standard buffers provided in this Title, provided all functions and values have been adequately addressed. Buffer reductions also allow for reasonable use of property.
	15	This actually is little more than a process by which a property owner, having fallen in the clutches of the permit authority and actually wanting to move forward with their project, is furthest deprived of the right of use. Under the guise of "decreasing" a buffer, the department exercises an unlimited authority to extort other concession in the use of land from the owner. It really is impressive when the department gets to refer to at least two or three more "Chapters" and require production of one more plan.	Comment noted.
.310 (B) Priority species	14	No local creatures listed as protected; WAC references incorrect; Need to list each species and benchmarks for each	<i>Correction.</i> WAC references will be updated to WAC 220-200-100 (Wildlife classified as protected shall not be hunted or fished) and 220-610-010 (Wildlife classified as endangered species). The Washington Department of Fish and Wildlife maintains a Priority Habitats and Species database, which includes a searchable mapping tool and list of species by County. This is referenced in code to describe the categorization of Wildlife Habitat Conservation Areas.
	14	Directly conflicts with Comprehensive Plan Reasonable Measure for maximum lot sizes in urban areas	To the contrary, this provision ensures that new lots created by subdivisions will be buildable without resorting to variance procedures.
	15	Is zoning a consideration? Why is this in this Title? Land division requiring dedicated buffers is a taking.	These sections are to be considered and are referenced in Title 16, Land Division and Development. This CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law. Propose amendment: replace "dedicate" with "permanently preserved".

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.315 (H) Land Division and Land Use Permits	15	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.	The requirement that each new lot have a buildable site is consistent with state case law. Additionally, this CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
	15	What is "performance based development"? Who created it? Where documented?	Performance-based development is described in detail in KCC Title 17.450.
Format	7	No way to track markup	Comment Noted.
Maps	15, 16	There are no wildlife designated areas on the map	Protected species are mapped by the Department of Fish and Wildlife through their Priority Habitats and Species (PHS) Program. These maps can be very extensive and are not reasonably mapped in static form (print), but are available online and can be searched at the parcel level for known priority habitats or species (http://apps.wdfw.wa.gov/phsontheweb/). Some species/habitats are intentionally not published because doing so may put the species at greater risk. This Title references WDFW's PHS program as a source.
	15	This paragraph seems to imply that although the DNR is well aware of all the streams in Kitsap and has designated each, the County is not certain and needs to complete an On-site survey to make a final determination. It also appears that 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?	The Stream Typing System is established by DNR. However, the state recognizes that the actual locations on the map are not certain because they are based on a model using older technology that uses a coarser scale of imagery. Both the location and type are to be determined on a site-by-site basis, as with any other critical area.
.315 (G) Agricultural Restrictions	9	Farm plans can result in major deductoins in buffer	Existing and ongoing agriculture is provided with exempt status. New or expanded agricultural uses would need to meet current development standards of this Title. RCW 36.70A.060 requires development regulations assure the conservation of agricultural lands and to protect critical areas. While this Title allows for the implementation of a Farm Plan to meet this requirement, they must now address more than water quality, such as wildlife (the change in this Title to a "farm resource conservation and managment plan" from simply "farm plan").
.315 (H) Trails and trail-related facilities	15	Discrepancy between what is allowed for public lands/public benefit and what is required of private landowners.	This section does not allow the government to build anything on private property, but regulates how individuals or entities (whether they are private or public) may construct trails and trail-related facilities on their own property when they are within a critical area or its buffer.

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.315(I) Utilities	15	Are BMPs fixed or dynamic? Do they backfit to previous applications? Who enforces order of preference on location? Lead paints not available, but what about cupric oxide in wet areas?	Best management practices shift with industry standards as technologies evolve and are more readily available. All development is conforming based on the standards in code at the time of application and are not retroactive. Preference of location is reviewed as part of mitigation sequencing of avoidance and minimization measures. <i>Consideration:</i> Issue of substances, such as lead paints or other hazardous substances, will be reviewed for best language.
.315 (J) Bank Stabilization	15	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.	Comment noted.
.315 (M) Road/Street Repair and Constructions	15	See Comment/Response for 19.200 Wetlands	See Comment/Response for 19.200 Wetlands
19.400 Geologically Hazardous Areas			
.405 Purpose and Applicability	15	Should not the protection of property also be included within the considerations? The intent below indicates that is part of the issue.	It is. 19.400.405(A)(1).
		(B) 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?	No. This means that a separate permit for road construction would be required. Once the road is permitted and constructed, the data gathering itself would be exempt, provided other provisions in this section are met.
	15	(A.1)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?	A geologic assessment is required whenever the map indicates there is a possible hazard on site. Minimum top and toe of slope setbacks are in place based on BAS. The geotechnical report may indicate a larger setback is required.
		(A.2) 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?	Such structures are used as mitigating measures for safety and bank stabilization. However, if the primary structure under application review (house, for example), can be located further back from the hazard, that would be required under mitigation sequencing of avoidance and minimization. Retaining walls along stream banks and lake shorelines can negatively impact habitat connectivity and other functions.
		(A.4)What if there is an alternative manner under best practices or is that not possible?	Minimization is a requirement of mitigation sequencing. Impervious surfaces and vegetation removal in erosion and landslide hazard areas are standard BMPs. How this is successfully demonstrated and accomplished may vary over time.
		(B.1)How is this determined and who makes that determination? Who has the liability if the determination is incorrect?	Increased risk could include siting development at the lowest recommended setback, or clearing stabilizing vegetation along a slope.
		C- Please see comments on previous section dealing with the same issues. (Field marking requirements)	Comment noted.

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.410 General requirements		(D.1)- 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?	These standards are based on BAS, and states preferences for limbing as opposed to topping, which can ultimately damage the tree.
		(D.2)See the previous discussion on "hazard" trees. What happens if a tree is felled by wind or other natural occurrence?	See Response to 19.100.130(B).
		(D.3) 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?	This is an existing provision and there has been no indication that this particular regulation has impacted the ability to construct. If construction in these hazard areas must occur outside that time window, an engineer is allowed to submit an erosion and sediment control plan to address erosion control methods for the site.
		(D.4) So, regardless of the illogic of the underlying considerations or the added cost to the project. Is there any variance to this rule?	This provision is specific to roads and utility construction. Before clearing can begin for those efforts, adequate erosion control needs to be in place.
		E- Does the County not know where all existing logging roads are and the geological condition associated with those roads?	Such an evaluation has not been conducted to our knowledge. See Title 18.16 Timber Harvest for more information on the activities for which such an assessment would be required.
		(F.1)What does this mean? How is it decided and imposed? What options (other than non-use) does the property owner have?	Clustering of development or enhancement of the top of slope vegetation to avoid the hazard areas may be required as part of mitigation sequencing for development.
	.415 Designation (General-maps)	11	Does DCD have the expertise to add this new paragraph? [assuming the review?]; what maps are used and what is their accuracy?
15		If they are for informational purposes only where exactly are the specific criteria and guidelines located so the property owner may property understand?	The maps are only intended to provide probable location of critical areas (WAC 365-190-080). In all cases, the regulations provided in this Title apply to what is on-the-ground. All chapters provide criteria for, or references to the criteria, for determining where and when the critical area is present.

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.420 Erosion Hazard Areas	15	(C.3) 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?	In most cases, physical field studies have not been applied, but rather rely on remote sensing techniques and other technology. They can also be based on models, which are ground-truthed for accuracy and peer reviewed. Site verification is necessary to reduce risk to life safety and their critical functions. Historic evidence for channel migration may include visible cut banks, differences in soils, and other indicators. Notice of application does go out to adjacent property owners within a certain radius. This would include any reports done to support the application.
.435 Development Standards	11	Why has native vegetation become such a priority over ornamental or other types of vegetation?	Native vegetation provides greater function for native species, some of which have co-evolved to depend on each other or provide important life-stage support (food, shelter, etc.) that cannot be adequately duplicated with non-native vegetation.
	14	Delete coastal references because this is in SMP	These references need to remain. The SMP (Title 22) adopts by reference this Chapter for use in shoreline areas.
	15	(A.2.a) 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?	These development standards are based on BAS and industry Best Management Practices.
	15	(A.4) Why is additional buffer space or planting native vegetation acceptable but a properly engineered drainage flow system is not?	Retention or planting of native vegetation for slope stability is a means of mitigating for stormwater while also providing for other functions and values. A properly engineered drainage system that meets the provisions of this and other Titles of Kitsap County Code are allowed.
		(B.1) 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.	Propose to add clarification that this would be required for those projects located within 200 feet of a high seismic hazard area (faults with evidence of rupture at the surface). Such evidence indicates more recent seismic activity and more certainty of location. This increased certainty increases the calculated risk in developing in such locations.
.440 Review Procedures	15	How frequently are these maps reviewed and updates? What are the qualifications of the individuals assigned responsibility to approve the information reflected on the maps?	The geologically hazardous areas maps are proposed for update with this CAO review. They were produced by professional, licensed geologists using peer reviewed data and methods. This section refers to staff review of the map to determine whether there is a possible geologically hazardous area on site that needs further investigation.
.445 Independent consultant review	15	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?	Comment noted.

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.450 Recording and disclosure	15	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.	The CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regularoty or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
19.500 FFA			
.505 Purpose	15	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.	Comment noted.
19.600 CARA			
.605 Purpose	15	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 be 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?	It is not uncommon for each chapter to begin with policy goals or an intent section. These policies are based on WAC 365-190-100, as well as provide clarity to regulations should intent be questioned.
	15	(A) Based on WRIA this would include the entire surface area of the county.	See responses to definitions for .140 Aquifer recharge area and .215 Critical Aquifer Recharge Area
.610 Categories	15	(A.4)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 that are included in the existing reports and maps?	The maps for critical aquifer recharge areas are maintained by the County. However, some of the data that go into developing the map are managed by other entities, such as our local water purveyors (utility districts). The utilities have not updated their criteria or data since the previous update. Therefore the County is not proposing any changes to the CARA map at this time. WAC 365-190-100 provides criteria for consideration in identifying such areas.
	15	(B.2) 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?	Clarification could be applied here. The County GIS provides one resource, which is included in the CARA map. The hydrogeologist may demonstrate through the hydrogeological report that this criteria is not present, and therefore should be the lesser category.
	15	C- Will produce or has produced? What is the status of the "maps" since they are heavily referenced in the paragraphs above?	The maps for critical aquifer recharge areas are maintained by the County. However, some of the data that go into developing the map are managed by other entities, such as our local water purveyors (utility districts). The utilities have not updated their criteria or data since the previous update. Therefore the County is not proposing any changes to the CARA map at this time. WAC 365-190-100 provides criteria for consideration in identifying such areas.
.615 Development Standards	15	(B.2)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?	The water purveyors and health department each have unique expertise in this field. They help the Department in determining when a hydrogeological report would be required. They do NOT have authority to approve or disapprove the application. The results of that report are used to condition the permit for approval.

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.619 Development Standards	15	(C.1) 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?	This provision states that Tribes will be "notified and invited to comment on the preliminary phases of the County's review". State and federal agencies, as well as affected tribes are often invited to provide technical feedback prior to a formal comment period. This allows staff to consider and address any major issues or conflicts up front.
.620 Activities with potential threat ..(Table)	15	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.	This list was reviewed and no changes were determined necessary. Open water contamination concerns are valid, but this particular chapter addresses groundwater contamination, which OSS's are more likely to be a risk to, than sewer systems that discharge to open water.
19.700 Special Reports			
General	14	The average parcel must provide five technical studies, significantly driving up cost	Disagree. The CAO only describes five types of special reports, which are only required in circumstances where the development activities would be in proximity to that critical area. Some critical areas, such as Critical Aquifer Recharge Areas and the associated hydrogeological report, only apply to certain commercial and industrial uses.
	15	Licensed professionals that would prepare these report 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?	Comment Noted. The special reports are to provide more accurate, site-specific "BAS" and to ensure that property owners with critical area constraints can seek some relief from the application of a standard buffers approach.
	16	If going to require specialist, they need to determine the functions to protect and buffer; by requiring specialists, the County acknowledges landowners are incapable of interpreting the ordinance	The purpose of the special reports (and the qualified specialists), is to provide site-specific detail, including assessing the existing functions on site and recommendations for buffers and setbacks.
.710 Wetland Delineation-	14	Delineation "within 250 feet" would require applicant to enter and survey a neighbors property	The 250 feet refers to providing a copy of the USFWS National Wetland Inventory Map for an area within 250' of the site. No field work or property access is required to meet this provision.
	14	Delete "including vegetative, fauna, habitat" from the analysis of functional values as these could easily become large studies with limited value	Vegetation, fauna and habitat are included in the definition of functions and values. These were added, as that was the intent of this site-specific analysis in the report.
	15	(B.3.e) [contours at 2 ft. is preferred] Is this really necessary? Why not five feet or eight feet? The cost of determining and producing this contour map will be significant.	This is a preference, not a requirement, and also states "smallest readily available intervals".

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.710 Wetland Delineation-General	11	Should not require specialist to determine presence (wetlands)- this is an added cost and needs to be rewritten.	The purpose of the special reports (and the qualified specialists), is to provide site-specific detail, including assessing the existing functions on site and recommendations for buffers and setbacks. Additionally, there is a sperate wetland review process for single-family dwellings (19.200.215(C)) which provides for expedited review if outside the largest buffer for the category of wetland present through the "wetland certification process". This requiries no survey.
.715 Wetland Mitigation Report	14	Too complex and costly, needs simplification	Comment noted.
	15	(J.4.d) Does this include those invasive plants used by the state for erosion control and bank stability?	Comment noted.
	15	(K)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.	Comment noted.
	15	(M.2.a) Once again the county requires a "contingency " plan but has no idea of how this title is meeting objectives> Why should a n applicant have to meet criteria that the county is not willing or able to implement?	Comment noted.
	15	R- If the county does not posses 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?	A list of qualified consultants is not a list of preference or promotion. Third party reviewers may be selected from this list, which is based on the certifications and experience, as described in this Title, of the individuals.
.720 Habitat Management Plan	14	Display a list of critical habitat so applicants know what they are dealing with	19.300.310(B)(3) describes Wildlife Habitat Conservation Areas. These include habitats for state and federally listed endangered, threatened, and sensitive species, as well as habitats for state listed candidate and monitored species "documented in maps or databases available to Kitsap county...". Kitsap County does not manage these lists, which are subject to change. Title 19 references the WDFW Priority Habitats and Species database, which is available online.
	15	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?	Revise. This section and others referencing HMPS for Bald Eagles will be revised. Further guidance from USFWS has clarified that Habitat Management Plans would not be necessary, as long as permits are conditioned for appropriate constuction timing and not disturbing the nest tree. Bald Eagles are still state listed as Sensitive, and a federal Species of Concern and therefore still classified as a Class I species under this Title.
	15	(D.2) Since we have learned that Spotted Owls are happy to reside in K-Mart signs and actually are more threatened by Barred Owls that anything else, just how exactly does one determine what plants are more conducive as habitat for each specie and how are the differences in requirements reconciled for this plan?	Best Available Science supports the need for native plants to meet several functions, including habitat, water quality, water quantity, and erosion control.

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.730 Hydrogeological Report	14	reporting on well heads within 1000 feet of the project violates <i>McCready</i> and 4th Amendment	The CAO draft has been reviewed by staff and the Kitsap County Prosecutor's Office following the 2015 Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regularoty or Administrative Actions to Avoid Unconstitutional Takings of Private Property. The CAO has been determined to not result in a taking or a violation of substantive due process under current law.
19.800 Appendices			
E- Notice to Title	14	See Above. (19.100.155)	Comment noted.
H- Alteration form	14	Delete this.	It has already been deleted.