



**Department of Community Development - Louisa Garbo, Director**

**619 Division Street**

**Port Orchard, WA 98366**

## **STAFF REPORT –**

### **Code Update: Critical Areas Ordinance**

**DATE:** June 20, 2017

**TO:** Kitsap Board of County Commissioners and Kitsap County Planning Commission

**FROM:** Kathlene Barnhart, Senior Planner

**SUBJECT:** 2017 Code Update: Critical Areas Ordinance

**ATTACHMENTS:** Planning Commission Findings of Fact, Conclusion and Recommendation (June 6, 2017- with Appendices)

Kitsap County updated the Comprehensive Plan, and associated development regulations on June 27, 2016. The Department of Commerce offers a one-year 'grace-period' to complete updates to critical areas regulations. This update is therefore under a required adoption date of June 30, 2017.

**NOTICE:** Notices of the Planning Commission public hearings were published in the official County newspaper, the Kitsap Sun, on April 17, 2017 and on the Kitsap County Critical Areas Ordinance website: [https://spf.kitsapgov.com/dcd/Pages/Critical\\_Areas\\_Update.aspx](https://spf.kitsapgov.com/dcd/Pages/Critical_Areas_Update.aspx). Notices were also sent via electronic notification on April 18 2017 to interested parties through the

GovDelivery system.

Notices of the Board of County Commissioners public hearings were published accordingly on June 9, 2017.

**SEPA:** A Determination of Non-Significance was on April 27, 2017 as required by WAC 197-11-340 and chapter 18.04 of Kitsap County Code. No comments or appeals were received during the 14 day public comment period, which ended May 10, 2017.

## RECOMMENDATION

Department of Community Development staff recommend approval of the draft development regulations in Title 19 (Critical Areas Ordinance), as proposed in the March 1, 2017 draft and amendments as presented in Appendix A. Further, staff finds the proposed updates to the development regulations effectively address requirements set forth in the Growth Management Act (GMA) and the Countywide Planning Policies.

## PUBLIC OUTREACH/PARTICIPATION

Public participation is an essential, and required, component for updating development regulations. The list below outlines the public participation events that occurred; further details are found in the “Procedure” section of this report.

- **March 28, 2016- Approval of the CAO Update Scope of Work, Schedule and Public Participation Plan**
- **June through October, 2016- Working Group convened**
- **August 2016 through February 2017- Planning Commission and Board briefings.**
- **March 1- 31, 2017. Draft available for public comment; Online open house launched.**
- **March 7 and 20, 2017- Planning Commission briefings.**
- **March 23, 28, and 30, 2017- Open houses.**
- **April 3 and 26, 2017- Board briefings.**
- **April 4 and 18, 2017- Planning Commission work studies.** All comments received during the initial comment period (March 1-31, 2017) were provided on-line on April 18, 2017.
- **April 25, 27 and May 2, 2017- Planning Commission hearings.**
- **May 16 and 23, 2017- Planning Commission deliberations.**
- **June 6, 2017- Planning Commission Findings, Conclusions and Recommendations.**
- **May 24, 2017- Board briefing.**
- **June 12 and 19, 2017- Board work studies.**
- **June 20, 21, and 26, 2017- Board hearings.**

## BACKGROUND

The Kitsap County Comprehensive Plan and associated Critical Areas Ordinance (interim) were originally adopted in 1998. Since that time, the CAO was fully adopted in 1999, updated in 2005, and received a limited amendment in 2007. Most recently, the 2016 Comprehensive Plan was adopted on June 27, 2016.

The Department of Commerce does not have approval authority over the CAO, but does review for consistency with the Growth Management Act and ensures that jurisdictions remain in compliance by meeting the legislatively appointed deadlines for updates.

### **The following are the Growth Management Act directives for this update:**

1. Kitsap County's Critical Areas Ordinance (CAO) (Title 19 KCC) implements the requirements of Chapter 36.70A RCW, the Growth Management Act (the Act). RCW 36.70A.020 includes planning goal (10) Environment, to guide development regulations to "protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water".
2. RCW 36.70A.050 directs the Washington Department of Commerce to adopt, in consultation with the Department of Ecology, guidelines to guide the classification of critical areas. These are minimum guidelines that apply to all jurisdictions, but they also allow for regional differences.
3. RCW 36.70A.040 directs the County to designate critical areas and adopt development regulations protecting these critical areas under RCW 36.70A.170 and 36.70A.060.
4. RCW 36.70A.130 (4) directs Kitsap County to "take action to review, and if needed, revise their comprehensive plans and development regulations" by June 30, 2016. Because Kitsap County adopted its Comprehensive Plan in June of 2016, and there is a one year 'grace period' to complete updates to development regulations that protect critical areas, Kitsap County is under legislative authority to review and revise its CAO no later than June 30, 2017.

This update was also driven by updates to the Washington Administrative Code (WAC), applicable decisions by the Growth Management Hearings Board and other case law, as well as

“best available science” provided as guidance from applicable state agencies as directed in RCW 36.70A.050.

**WAC changes include:**

1. In 2010, the legislature established a new rule in WAC 365-196-580 on the integration of the Shoreline Management Act (SMA) with the GMA. This rule addressed overlaps between designated critical areas and shorelines of the state.
2. In 2010, the Department of Commerce established new rules in WAC 365-190 establishing minimum guidelines on critical area classification and designation (best available science, maps), including guidelines on wetlands (WAC 365-190-090), critical aquifer recharge areas (WAC 365-190-100), frequently flooded areas (WAC 365-190-110), geologically hazardous areas (WAC 365-190-120), and fish and wildlife habitat conservation areas (WAC 365-190-130).
3. Also in 2010, new rules were established in WAC 365-196-830 addressing the protection of critical areas. This rule indicates that regulations must preserve the existing functions and values of critical areas, but if harm is allowed, they must require compensatory mitigation of the harm. It also addresses appropriate scales for evaluating functions and values, the use of both regulatory and non-regulatory measures, and the use of best available science, as referenced in chapter 365-195 WAC.

## **PROCEDURE**

1. At the Board’s direction following an August 24, 2015 briefing, the planning process for Kitsap County’s CAO update began with a preliminary staff review of ‘best available science’ since the last update, amendments to relevant state and federal mandates, recent court and Growth Management Hearings Board decisions, and any other known internal inconsistencies or code conflicts. The Planning Commission was briefed on this review and the “Supplemental Best Available Science Review and Required Changes” on February 2, 2016.
2. The Board of County Commissioners approved the CAO Update Scope of Work, Schedule and Public Participation Plan at a briefing on March 28, 2016. Included in this approval was the direction to convene an informal Working Group comprised of state and local agency technical experts (Department of Ecology, Department of Fish

and Wildlife, Department of Natural Resources, Kitsap PUD, Kitsap Public Health) tribal representatives (Suquamish, Port Gamble S’Klallam, Suquamish, Puyallup, Squaxin), and representatives from stakeholder organizations (Kitsap Builders Association, Kitsap Alliance of Property Owners, West Sound Conservation Council, FutureWise).

3. In April and May of 2016, staff produced an initial red-line draft of Title 19, based on the changes identified in the “Supplemental Best Available Science Review and Required Changes” document. These were distributed to the Working Group, along with the “Working Group: Purpose, Ground Rules and Schedule” document. This document describes the Working Group as “a technical sounding-board for County staff” and to “help fill in any gaps and to clarify” best available science.
4. Working Group meetings were held on June 20 (Frequently Flooded Areas and Critical Aquifer Recharge), June 30 (Wetlands), July 26 (Fish and Wildlife Habitat Conservation Areas), August 4 (Geologically Hazardous Areas), and September 15 (Special Reports, Appendices). Meeting notes were drafted and sent to all members for finalization, along with a revised draft based on their feedback at the meeting. Final comments were discussed on Frequently Flooded Areas and Critical Aquifer Recharge Areas at the September 15 meeting, and the remainder at a final meeting on October 19, 2016.
5. At regularly scheduled meetings that were open to the public and noticed on the County’s website, the Planning Commission was provided briefings on the status and findings from the Working Group on August 16 and November 15, 2016. The November meeting included a briefing on public outreach, which included the launch of an online open house on the County’s CAO page and presentations to the Manchester, Kingston, Suquamish and Central Kitsap Citizen Advisory Councils. Agendas, minutes and meeting materials were posted on the County’s Planning Commission webpage.
6. At regularly scheduled meetings that were open to the public, the Board of County Commissioners were briefed, typically monthly, for the duration of 2016, usually in conjunction with the Comprehensive Plan. A briefing specific to CAO was held on August 10, 2016.
7. On January 17, 2017, at an open public meeting, the Planning Commission received a briefing on the expected changes in the draft, which was not yet made available due to internal and legal review.

8. At a February 22 work study briefing, the Board of County Commissioners were presented with a revised schedule, including an alternative extended adoption date. The Board reserved that decision until their April briefing, after the close of the initial public comment period.
9. On February 27, 2017, the Board received a public briefing at their regular business meeting, announcing the schedule for the upcoming comment period of the draft.
10. On March 1, the Draft CAO was published for public review and comment through March 31, 2017. This included whole drafts (underline/strike-out and clean versions), draft by chapter, "Summary of Changes" documents (whole document and by chapter), and "Best Available Science Summary" (whole document and by chapter). Notice was provided via press release to all local print and broadcast media, and published on the County's main webpage, DCD's webpage, and GovDelivery notices (email, Facebook, Twitter) to all recipients subscribed to the Department of Community Development or Critical Areas Ordinance.
11. At a regular public meeting on March 7, the Planning Commission was briefed on the released draft materials. The Board of County Commissioners were similarly briefed at a public meeting on March 20 regarding comments and outreach.
12. Public Open Houses regarding the Draft CAO were advertised via press release, GovDelivery Notice, and on the CAO and main County webpages on March 15, 2017 and held on March 23 (Kingston, Village Green Community Center), March 28 (Port Orchard, County Administrative Building, and March 30 (Central Kitsap, Fairgrounds-Eagles Nest). An additional GovDelivery Notice was provided on March 30, prior to the Central Kitsap Open House.
13. Additional outreach was conducted to the Citizen Advisory Councils in March and April. Suquamish CAC was on March 2; Manchester was on March 7; Kingston was on April 5; and Central Kitsap was on April 12.
14. Following the close of the public comment period and following briefing by staff at a public meeting on April 3, 2017, the Board of County Commissioners made the decision to continue the current schedule (June 30, 2017 adoption).
15. The Planning Commission held two work studies on the draft CAO: April 4 and April 18, 2017. On April 18, DCD also advertised through GovDelivery and press release

(main County and CAO webpages; all local print and broadcast media) and published to the CAO webpage all public comments received through March 31, summaries of those comments by submission, and comment summaries, as well as County responses by topic or section.

16. Planning Commission hearings were timely and effectively noticed (April 18) and held in conjunction with additional Open Houses prior to the hearings on April 25 (Kitsap County Fairgrounds, President's Hall), April 27 (Poulsbo City Hall), and May 2 (Port Orchard, County Administrative Building). The Planning Commission held the hearing record open for written testimony through the end the May 2, 2017 hearing.
17. On April 26, the Board of County Commissioners were briefed on the comments and responses published on April 18.
18. The SEPA DNS (Determination of Non-significance) was issued on April 27, 2017 in accordance with WAC 197-11-340 and was open for a 14 day public comment period. No comments or appeals were received.
19. At public meetings on May 16 and 23, 2017, the Planning Commission held deliberations on the draft CAO. With the posting of the agenda on the Planning Commission website, staff provided the Planning Commission and public with a matrix comparing the current CAO with changes in the draft, as well as staff recommendations based on all public comment to-date.
20. Following public deliberations on May 23, the Planning Commission voted 5 to 1 to recommend approval of the draft CAO, incorporating the text revisions voted on during the deliberation meetings.
21. At a public meeting on May 24, the Board of County Commissioners were briefed on the outcome of the Planning Commission deliberations.
22. At a public meeting on June 6, 2017, the Kitsap County Planning Commission approved and signed the Findings of Fact and Recommendation to the Board of County Commissioners on the Critical Areas Ordinance Update. This included motions to: approve the draft with changes as presented in Appendix A, a minority report as presented in Appendix B, approve the Critical Areas Map (Appendix C), and recommend an implementation delay of 90 days from adoption.

23. The Board of County Commissioners are scheduled to hold two work studies on the CAO, June 12 and 19, 2017.
24. Three hearings were properly noticed to be held by the Board of County Commissioners. The first will be on June 20 as a special meeting in Poulsbo (Poulsbo City Hall, 5:30PM). The second will be on June 21 as a special meeting in Silverdale (Silverdale Water District, 5:30PM). The third hearing will be on June 26 at the regular business meeting in Port Orchard (Kitsap County Administration Building, Commissioner's Chambers).
25. Deliberations are scheduled to be held on June 27 in Port Orchard from 9:00am – 5:00pm. A continuation of deliberations are scheduled to be held on June 28 from 8:30am - 12:00pm.