



# Critical Areas Ordinance Update

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PLANNING COMMISSION WORK STUDY

APRIL 18, 2017

# Outline

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- Review Schedule
- Comment/Response Matrix
- 19.300 Fish and Wildlife Habitat Conservation Areas
- 19.400 Geologically Hazardous Areas
- 19.500 Frequently Flooded Areas
- 19.600 Critical Aquifer Recharge Areas
- 19.700 Special Reports
- 19.800 Appendices

# Schedule

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- Work Study- April 4<sup>th</sup>
- Work Study- April 18<sup>th</sup>
- Hearing (Fairgrounds)- April 25<sup>th</sup>
- Hearing (Poulsbo)- April 27<sup>th</sup>
- Hearing (Port Orchard)- May 2<sup>nd</sup>
- Deliberations- May 16<sup>th</sup> (beginning at 1pm); May 23<sup>rd</sup>
- Findings of Fact- June 6<sup>th</sup>

# 19.300

## Fish and Wildlife Habitat Conservation Areas

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### □ 19.300.305 Purpose

- "...within or adjacent to..."
- "...no net loss of critical area functions and values..." + grammar edits
- (D) added "Avoid or minimize human and wildlife conflicts through planning and implementation of wildlife corridors where feasible."

# 19.300

## Fish and Wildlife Habitat Conservation Areas

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### □ 19.300.310 Fish and wildlife habitat conservation area categories

- (A) may occur on both public or private lands
- (B)(1)- Streams
  - Type S regulated under SMP
  - DNR maps not the only source
  - Field verification (WAC- “should”)
- (B)(2)- Lakes (Shorelines)
- (B)(3)- Wildlife Habitat Conservation Areas
  - (a)(1) and (2)- WDFW Priority Habitats and Species and Wildlife Areas (WAC)
  - (b)- Deleted “and its citizens” (not all PHS locations are public in order to protect nesting areas); added “viable population”

# 19.300

## Fish and Wildlife Habitat Conservation Areas

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### □ 19.300.315 Development Standards

- Changes to clarify (it is not the critical area/buffer subject to regulations, but rather the activity)
- (A)(1)- deleted “or setbacks” (not intended to remain undisturbed)
- Table- Shoreline streams removed; Saltwater shorelines and lakes removed; Lakes less than 20 acres added
- (A)(3)- deleted, Buffer Widths and Setbacks for Shorelines.
- (A)(3)- Provision for Decreasing Buffer.
  - Clarification/grammatical
  - “...reduction is the minimum necessary for the permitted use...”
  - reduce the buffer width by up to 25% in a Type 1 decision (administrative); delete SFR and shoreline language; Reductions greater than 25% for SFR as Type 2 decision; Variance for all other uses if >25%.
- (A)(5) and (6)- Ravines and Channel Migration Zones- Added clarification that setbacks for geologically hazardous areas may also apply

# 19.300

## Fish and Wildlife Habitat Conservation Areas

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### □ 19.300.315 (cont.)

- (A)(10)- Buffer and Building Setbacks for Water Dependent Activities- deleted (provision for water dependency is in Shoreline Management Act)
- (B)- Class I Wildlife Habitat Conservation Areas
  - “sites” vs. “development permits”
  - Bald Eagles
- (D)- Stream Crossings-
  - added that other state and local regulations apply and that the use the WDFW guidance, “Water Crossing Design Guidelines” are encouraged
  - (1) and (2) changed order (not new); salmonid stream vs. spawning areas; spawning not only critical life stage
  - (3) Added “...or to provide mid-span footings for the purpose of increased floodplain connectivity.”

# 19.300

## Fish and Wildlife Habitat Conservation Areas

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### □ 19.300.315 (cont.)

- (E) Stream Relocations
  - Grammatical/clarification
  - (1) Replaced “should” with “shall be replanted, added “and maintained” and “when required by a habitat management plan”
- (F) Pesticides, Fertilizers and Herbicides- see 19.200 Wetlands
- (G) (1) Land Use and Land Use Permits- open water area[s].... “shall not be used ~~permitted for use~~ in calculating minimum lot area.”
- (G) [TYPO, should be (H)] Agricultural Restrictions- see 19.200 Wetlands; same
- (H) [TYPO, should be (I)] Trails and Trail-Related Facilities- see 19.200 Wetlands, same
- (I) [TYPO, should be (J)] Utilities- added that placement also applies to buffers
  - (3) “only when...”
  - (5) added “unless no reasonable alternative location is available” when removing trees for utility corridors and locating corridor access; added a order of preference for locating utility corridors; Mitigation



# 19.300

## Fish and Wildlife Habitat Conservation Areas

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### □ 19.300.315 (cont.)

- (J) [TYPO, should be (K)] Bank Stabilization-
  - Removed references to bluff and shoreline, where appropriate, and replaced with “channel” or “bank” or “channel migration zones”
  
- (M) [TYPO, should be (N)] Road/Street Repair and Construction-
  - Added (5)- Mitigation

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.405 Purpose and applicability

- (A)- Added intro paragraph, language taken from updated WAC (365-190-120); intent remains same
- (B)- Added paragraph to clarify application to activities requiring project permits and clearing, but not for testing and surveying as long as no road construction needed to conduct

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.410 General Requirements

- (A) Standards “shall” to apply to any activity or clearing in an erosion or landslide area
  - (1)-Comply with geotech, when required, including largest buffer
  - (2)-Utilize industry BMPs
  - (3)-Comply with Title 12 and prevent collection, concentration or discharge of storm/ground water
  - (4)- Retained
  - (5)- Deleted
- (B) Standards for “shall not” actions in an erosion or landslide area- retained
- (C) Field marking requirements-retained
- (D) Clearing, grading and vegetation removal-
  - (1) was (D)(2), added “through consultation with the department” as how ‘allowed’
  - (2)- added, no removal of vegetation from landslide hazard area without arborist (danger tree) or management plan
  - (3)- Seasonal Restrictions, retained (was (E))
  - (4)-(7)- retained
- (E) and (F)- Retained (was (K) and (L)(M), respectively)

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.415 Designation of geologically hazardous areas

#### ■ New section-

- This chapter designates, defines, and provides criteria for identification of geologically hazardous areas
- Project proponents are responsible for determining whether such a hazard exists, and the department will verify on a case-by-case basis using the criteria in this chapter.
- The “county maintains some maps of potentially geologically hazardous areas, they are for informational purposes only and may not accurately represent all such areas.”

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.420 Erosion Hazard Areas

- (A) General- definition
- (B) Potential erosion hazard areas- what is on the map
  - High hazard
    - Channel Migration Zones
    - Coastal erosion (sediment source rating value 0.6 to 1.0)
  - Moderate hazard
    - Identified as geologically hazardous by NRCS Kitsap County Soil Survey
    - Slopes 15% or greater (retained)
    - Coastal erosion (sediment source rating value 0.3 to 0.6)
- (C) Erosion hazard indicators- for project proponent/geologist/review staff
  - Criteria used in map, or as amended
  - Coastal erosion hazards
  - Channel migration zones

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.425 Landslide hazard areas

- (A) General- definition
- (B) Potential landslide hazard areas- what is on the map
  - High hazard
    - Shallow landslide areas with FS 0.5 to 1.5
    - Slopes greater than 30% and meeting criteria of U, UOS, URS
    - All deep-seated landslide areas
  - Moderate hazard
    - Shallow landslide areas with FS 1.5 to 2.5
    - Slopes 15% or greater and NOT classified as I, U, UOS, or URS; soils classified by NRCS as “highly erodible” or “potentially highly erodible”; slopes 15% or greater with springs or groundwater seepage
    - Slopes in all areas 40% or greater
- (C) Landslide Hazard Indicators

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.430 Seismic Hazard Areas

- (A) General- definition
- (B) Potential Seismic hazard areas- what is on the map
  - High hazard area
    - Faults with evidence of rupture at the ground surface
  - Moderate hazard area
    - Areas susceptible to seismically induced soil liquefaction (hydric soils and filled areas; wetlands)
    - Areas identified as Seismic Site Class D, E and F (DNR)
    - Faults without recognized evidence of rupture at the ground surface
- (C) Seismic Hazard Indicators

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.435 Development Standards

#### ■ (A) Erosion and Landslide Hazard Development Standards

- (1) Development not allowed unless no alternate location and geological assessment demonstrates protection
- (2) Top of slope building setback
  - Added- All activities “requiring permits or clearing in erosion and landslide hazard areas”
  - Retains minimum 25’ native vegetation beyond top of slope and minimum 15’ building setback
  - (a) For high landslide hazard areas- retain setback of “height of the slope plus the greater of one-third vertical slope height or 25 ft. “
  - (b) For moderate hazard areas- retains 40’ from top of slope
- (3) Toe of slope- retained
- (4) and (5)- removed “buffer”, added “native vegetation” width; otherwise retained

#### ■ (B) Seismic Hazard Development Standards

- (1) Development within 200’ of hazard area allowed with geotechnical report confirming suitability, and addresses any past fill or grading on site (retained)
- (2) Conform to KCC 14.04, Kitsap County Building and Fire Code (retained)



# 19.400

## Geologically Hazardous Areas

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### □ 19.400.440 Review Procedures

- (A) Map review for potentially hazardous area
- (B) Geological Assessment if activity located in mapped potentially hazardous area
- (C) Field investigation by geotechnical professional
- (D) Assessment:
  - (1) Letter- no hazard within 200'
  - (2) Geological report- hazard within 200', but will not impact the site or need engineering design
  - (3) Geotechnical report- hazard within 200' AND will require engineering design or other mitigation measures necessary
- (E) Department Reviews assessment

# 19.400

## Geologically Hazardous Areas

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### □ 19.400.445 Independent Consultant Review

- This is a provision for all critical areas, but due to the highly technical nature and complexity of these reports, outside resources may be needed to ensure compliance.

### □ 19.400.450 Recording and Disclosure

- This is an attachment to the Notice to Title that would include:
  - An abstract and description of the risks identified in geotechnical report
  - A statement of understanding of risk and responsibility to disclose to future buyers
  - A statement of non-liability of the County for assuming risks

# 19.500

## Frequently Flooded Areas

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- “...give special consideration to anadromous fish habitat in combination with Chapter 19.300, Fish and Wildlife Habitat Conservation Areas and Title 22 Shoreline Master Program.”

# 19.600

## Critical Aquifer Recharge Areas

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### □ 19.600.605 Purpose

- Additions are based on changes to WAC 365-190-100
  - “for people and many other species”
  - “...and address land use activities that pose a potential to directly or indirectly contaminate or otherwise threaten aquifer water quality and quantity.”
  - (A) “...preventing degradation of the quality and, if needed, the quantity of potable groundwater.”
  - (D) “.....preserving natural functions and processes, especially for maintaining critical fish and wildlife habitat conservation areas.”

# 19.600

## Critical Aquifer Recharge Areas

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### □ 19.600.610 Critical aquifer recharge area categories

- (A)(2) Rather than sea level location, a more universal approach was to include areas “which are not separated from the underlying aquifers by an impermeable layer that provides adequate protections from contamination to the aquifer(s) below.”
- (A)(4) more information to add, reclassify, or remove an area from Category 1 now includes “susceptibility to... supply reduction”.
- (B)(2)
- (B)(5) Added for consistency, same reclassification clause as in (A)(4) for Category 1
- (C) map to include location “and defining characteristics”

# 19.600

## Critical Aquifer Recharge Areas

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### □ 19.600.615 Development Standards

- (A)(2) added quantity; corrected name of Kitsap Public Health
- (B)(2) need for Hydrogeological report to be determined “...when the proposed land use or activity may impact groundwater and surface water quality and quantity.”
- (C) Notification and Review.
  - (1) Affected water purveyors, tribes and Kitsap Public Health notified and invited to comments during review “of any development application in a critical aquifer recharge areas.”
  - (3) appeal to hearing examiner removed
- (D) Stormwater. Best management practices in accordance with Title 12, rather than “encourage[ing] infiltration”
- Table- Clarified that these uses are specific to water quality concerns only

# 19.700

## Special Reports

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### □ 19.700.705 Special Reports

- (A) Purpose. “...protecting and/or mitigating impact to critical areas”
- (B) grammatical clarification (clean-up)
- (C) Appeals section updated for Title 19 (and reference to Title 21 source)
- (D) Qualifications- as “required herein”; “prepared and signed by a the professionals identified below and in Chapter 19.500...”

# 19.700

## Special Reports

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### □ 19.700.710 Wetland delineation report

- (A) New sub-section, but brought in from Wetlands chapter (19.200.215)
- (B)
  - (2) to include a copy of any known previous delineations or investigations and a copy of the forms used to delineate the wetland area
  - (3)(h) Site map- rather than “the department may require an air photo...”, the report must now include the “..most recent, dated air photo...”
  - (5) Discussion of wetland boundary.
  - (6) General site conditions- water bodies, “including ditches and streams”
  - (7) location of wetland within the watershed (relates to hydrology)
  - (8) Functional values to analyze, added habitat and water quality
  - (10) rationale for the [wetland category] recommendation, and a copy of the rating form
- (C)(2) plant community assessment” no longer recognized as a delineation method
- (C)(3) delineation stakes need to remain in place until after final inspection when permanent buffer signs are installed



# 19.700

## Special Reports

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### □ 19.700.715 Wetland mitigation report

- Moved entirely from 19.200.250(C)
- (A) Cover/Title page and (B) Table of contents, added- was not explicitly identified in current CAO
- (C) Responsible parties
- (D) Executive summary- added:
  - Location
  - Description of measures taken to avoid and minimize impacts (showing mitigation sequencing; similar to what was (5))
  - Describe both the impacts and the proposed mitigation; clarifications
  - Explanation of other unavoidable impacts to other aquatic resources (not just waters of the state)
  - Other details: goals and objectives, proposed improvements to the larger watershed, proposed buffers for mitigation site

# 19.700

## Special Reports

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### □ 19.700.715 (cont.)

- (E) and (F) describe the development (impact) site (E) Project Description- expansion of existing sub-section with more detail (what should be included on map and in the description of the development site)
- (F) Ecological Assessment of Impact-
  - (1) Description of the temporary, indirect and direct impacts
  - (2) and (3) moved to (E)
  - Added detail to these existing sub-sections on what is expected in the description: (3) Description of water regime; (4) Description of soils; (5) Description of plant communities; (6) Description of any fauna using the site; (7) Landscape position and geomorphology; (8) Description of functions provided; (9) Wetland category rating and buffer requirements; (10) Information on water quality, where applicable

# 19.700

## Special Reports

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### □ 19.700.715 (cont.)

- (G) and (H) describe the mitigation site
- (G) Mitigation Approach
  - (1) Explain how each step of mitigation sequencing was followed up to compensatory mitigation
  - (3) Brief description of strategies to achieve goals
- (H) Proposed Mitigation Site
  - (1)(c) Current and past land use, added a description of the site constraints (what could affect success)
  - (2) Site selection rationale, added discussion of how mitigation site fits the needs of the watershed
  - (3) Existing/baseline ecological conditions
    - (a) – (c) and (f) – (l) are existing elements, but detail was added to each as to what is expected in each description
    - (d) added Description of other aquatic resources on the mitigation site and adjacent properties; (m) Information on water quality, where applicable

# 19.700

## Special Reports

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### □ 19.700.715 (cont.)

- (I) Preliminary Site Plan
  - (1) a “qualitative description”, rather than “explanation” of water regime and hydrology
  - (2) Discussion on how the project will provide proposed functions, includes how hydrologic data will support it, the rationale for each function and design features to achieve function
  - (3) Drawing- added clarifications to existing components
- (J) Final Site Plan/Design- added detail to all existing elements of what is expected in each description
  - (1) Site survey and topography; (2) Water regime; (3) Soil amendments; (4) Landscape Plans; (5) Construction specifications

# 19.700

## Special Reports

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### □ 19.700.715 (cont.)

- (M) Maintenance and Contingency Plans- added detail to all existing elements of what is expected in each description
- (N) Implementation Schedule- construction sequence and time schedule to starting and key events of project; implementation delays may result in increased mitigation; will submit as-built
- (P) Performance Bonds- Added a statement that financial assurances are “typically...one and a half times the estimated cost of mitigation”; corrected that the security would be released no EARLIER than five years after completion (success is not likely to be assured in less time)
- (Q) Waiver- deleted “in its opinion”

# 19.700

## Special Reports

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### □ 19.700.720 Habitat Management Plan

- (A) PHS, as updated
- (B) and (C) corrected typos
- (C)(3)- discuss avoidance, minimization and mitigation to fish and wildlife
- (D)
  - (1)(a) Added- reduction of building setback as first in sequence for reducing buffer
  - (2) Added- discussion of connection to existing wildlife corridors

# 19.700

## Special Reports

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### □ 19.700.725 Geological Assessments

- Section title changed
- “Whenever development is proposed in a potentially geologically hazardous areas...”
- Edits to allow for letter option, including qualifications (“Geological reports or letters may be prepared by a licensed geologist...”)

# 19.800

## Appendices

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- Appendix A- Rating System Categories
  - Points and terms updated as in 19.200
- Appendix B- DNR Stream Typing System
  - “Type F streams contain habitat for fish (not just salmonids, anadromous, or game)
- Appendix C- GIS Database
  - Updated- PHS (WDFW)
  - Added- Stream Typing of Select WRIA 15 Watersheds (Wild Fish Conservancy)
  - Added- Geologically Hazardous Areas (Kitsap County- GRI Consulting)
- Appendix E- Critical Area and Buffer Notice
  - Updated- Notary removed
- Appendix F- Critical Area Decision Types
  - Updated- Buffer averaging
- Appendix G (NEW)- Checklist and Sample Outline for a Delineation Report
- Appendix H (NEW)- Mitigation Plan Checklist
- Appendix G (REMOVED)- Wetland Buffer Alteration General Authorization Form