Critical Areas Ordinance
2016 Update

County Council Review
Workshop 4
7 February 2017
Today’s Workshop Topics

- Overview of Certain Proposed Amendments to:
  - Article 6 – Wetlands
  - Article 8 – Conservation Program on Agriculture Lands
Remember the Supporting Materials

- 2005 Best Available Science Report
- 2016 Best Available Science Supplemental Report
- Best Available Science studies
- Written comments
  - CAC
  - TAC
  - Staff
  - Public
- All are posted on the CAO Update website:
  - http://www.whatcomcounty.us/2417/County-Council-Review
As with other articles, many of the changes have to do with clarifications, incorporation of standard practices, and updated references. These minor or self-explanatory changes are explained in the comments of the draft code.

Changes of note include:
# Article 6 – Wetlands

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<tr>
<td>16.16.600(D)</td>
<td>Added “establishing minimum delineation standards” as one of the Article’s purposes.</td>
<td>N/A</td>
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<tr>
<td>16.16.610</td>
<td>Rectified the differences between the definition of wetlands contained in Article 8 and the description provided here.</td>
<td>N/A</td>
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<td>16.16.610(D)</td>
<td>Updating the wetlands classification system to meet the Department of Ecology’s newer rating system. Ecology has updated the Washington State Wetland Rating Systems for eastern and western Washington. These updates replace the 2004 versions of the rating systems including the annotated versions. The effective date of the 2014 rating systems is January 1, 2015. This effective date means that if you rate a wetland on or after that date, you will be required to use the 2014 updates for projects needing Ecology authorization.</td>
<td>14</td>
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<td>16.16.610(E)</td>
<td>Changing the minimum size of a regulated Class IV wetland from 4,356 to 1,000 square feet. The 4,356 sf standard was from previous Department of Ecology guidance (more than 10 years old now). The TAC says this exemption isn’t scientifically sound, and was made more as a policy choice. We now know that some spp. (e.g., fairy shrimp) are predominately found in smaller wetlands, and that even small wetlands serve important hydrologic functions.</td>
<td>5, 9, 10, 11</td>
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<td>16.16.620(G)2</td>
<td>Limiting stormwater dispersion outfalls to the outer 25% of a buffer, per DOE guidance.</td>
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<td>16.16.620(H)</td>
<td>Added a few new standards for trails, including a maximum width for private trails, limiting trails to the outer 25% of a buffer (instead of 50), and avoiding significant trees.</td>
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<td>16.16.630(A)</td>
<td>Added standards for what type of existing nonconforming uses or infrastructure may allow a portion of a standard buffer to not be considered buffer.</td>
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<td>16.16.640(D)</td>
<td>Added language from the new Ecology guidance (land use intensity table) regarding what type of implemented measures will reduce use intensity. The idea behind these mitigating measures is that use of them will decrease the intensity of the proposed adjacent land use so the buffer would be decreased from high to moderate or moderate to low land use intensity with associated buffers.</td>
<td>15</td>
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<tr>
<td>16.16.670(B)(6 &amp; 7)</td>
<td>As recommended by staff, added language to specify what should be contained in a wetland report, making it clearer for applicants and consultants.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.680(C)</td>
<td>Replaced wetland replacement ratio table with new table based on new DOE classification system. It was felt that this table allows a greater combination of mitigation types. The ratios remain pretty much the same.</td>
<td>12, 13, 14, 15</td>
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<td>16.16.680(D)</td>
<td>Limiting the Technical Administrator’s ability to reduce buffers on replacement wetlands because it is not appropriate to require one person to have less buffer requirement than another just because they chose a more constrained site. If there is not enough room on a site for the full mitigation buffer, then they need to find additional mitigation in another location or go to the bank for the remaining area.</td>
<td>N/A</td>
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<tr>
<td>16.16.680(E)(3)</td>
<td>Changing one of the criteria for reducing replacement ratios from “when meeting them would adversely affect other characteristics” to “when using the DOE guidance manual results in a lower mitigation ratio than the standard.” Reducing the standard ratios should be based on the degree of impacts and whether functions are being replaced, not on the size of the mitigation site. If the ratios are too small, and functions are not being adequately replaced, the mitigation bank should be considered for the remainder of credits.</td>
<td>11, 12, 13</td>
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Article 8 – Conservation Program on Agriculture Lands (CPAL)

- Of the 39 counties in Washington, Whatcom County is one of 11 counties not enrolled in the Voluntary Stewardship Program (VSP).
- Decided instead to develop our own critical areas regulations for ongoing ag, known as Conservation Program on Agriculture Lands (CPAL).
- Has been recommended by the State as a model for other non-VSP counties.
Article 8 – CPAL

- It’s basically a system that allows farmers with qualifying on-going agriculture to develop a farm-specific Conservation Farm Plan (CFP).
  - New agriculture must adhere to the CAO’s standard provisions.
- Doing so allows one to use modified critical areas regulations, substituting approved USDA Natural Resources Conservation Services (NRCS) best management practices.
Article 8 – CPAL

- 3 levels of Conservation Farm Plans
  - **Type 1 (small scale)**
    - < 1 AC/UA; no row or berry crops
    - includes most “hobby farms”
    - CFP can be done by farmer or 5 other qualified agencies
  - **Type 2 (moderate scale)**
    - > 1 AC/UA;
    - have orchards, vineyards, small-fruit field or row crops; and
    - drainage improvement districts
    - includes most commercial farms
    - CFP must be done by PDS, WCD, or a planning advisor
  - **Type 3 (large scale)**
    - includes dairies and animal feeding operations/concentrated animal feeding operations (AFO/CAFOs)
    - CFP must be done by PDS, WCD, or a planning advisor
Article 8 – CPAL

- Requirement to develop a CFP triggered by:
  - building or land use permit or
  - PIC referral
- CFPs can be developed by:
  - The farm operator
  - WC PDS
  - A qualified consultant
  - A Watershed Improvement District
  - The Whatcom Conservation District (WCD)
  - A Planning Advisor
- Most CFPs developed through the WCD
- Though all CFPs must be approved by PDS
Article 8 – CPAL: What’s in a CFP?

- Background info on the farm
- Objective
- Resource Inventory (soils, water, vegetation, animals, threatened and endangered species, and significant natural resources)
- Critical Areas Protection Requirements
  - Nutrient Management (NRCS Practice 590)
  - Fencing (NRCS Practice 382)
  - Prescribed Grazing (NRCS Practice 528A)
  - Drystack Manure Storage
  - Pasture Management
  - Livestock Watering
  - Confinement Area
- Action Plan/Implementation Schedule
Whatcom Conservation District

There are currently 101 certified dairies in operation in Whatcom County.
All have certified dairy nutrient management plans.
Since 2014 the CD has worked with 24 dairies on updates, modifications, new plans, etc.

Planning and Development Services
Have approved 102 since 2008
Article 8 – CPAL Monitoring

- Monitoring required beginning one year after plan approval and every two years thereafter, through the life of the plan, or more frequently at the Technical Administrator’s discretion.
- Annual self-certification allowed:
  - for Type 1 CFPs,
  - or if the plan is prepared by the WCD or a Planning Advisor except that every 5 years must submit report to PDS
- Monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions.
Article 8 – CPAL: Public Disclosure of CFPs

• RCW Chapter 42.56 (Public Records Act) and RCW 90.64.190 (Dairy Nutrient Management) exempts release of financial, commercial, and proprietary information farm plans, unless:
  • permission to release the farm plan is granted by the landowner or operator who requested the plan, or
  • the farm plan is used for the application or issuance of a permit (RCW 42.56.270)

• Dairies, AFOs, and CAFOs not required to apply for an NPDES permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. (RCW 42.56.610 & RCW 90.64.190)
Article 8 – CPAL: Partnership Agencies

- WA Department of Ecology
  - Water quality monitoring
  - Education & Outreach
- WA Department of Agriculture
  - Inspections & Enforcement of nutrient management plans
- Whatcom Conservation District
  - Prepares farm plans
  - Education & Outreach
Article 8 – CPAL: Partnership Agencies

- WC Public Works’ PIC Program
  - Water quality monitoring
  - Education & Outreach
- WC Planning and Development Services
  - Farm Plan approval, monitoring, & enforcement
  - PIC enforcement
- USDA
  - Funds the WCD efforts
- Environmental Protection Agency
  - Funding
  - Technical support
Article 8 – CPAL Amendments

- Up to this point the CPAL provisions were found in two places: Section 16.16.290 and Appendix A of the CAO. However, there was concern about having what appeared to be regulations in an appendix, so these two sections have been combined and moved to a new Article 8.

- In general, many of the amendments pertain to correcting grammar, updating references to other documents or laws, clarifying procedures, etc.

- While new sections have been created, and a few subsections moved to sections they seemed to fit into better, there really aren’t many substantive changes proposed.

- Changes of note include:
# Article 8 – CPAL

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<td>16.16.800</td>
<td>Updated the purpose statement to explicitly state the purpose of the program, and what is expected in exchange for having flexible standards.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.820</td>
<td>Renamed farm operation types from low, moderate, and high impact to Type 1, 2, and 3 to avoid value-laden words.</td>
<td>N/A</td>
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<tr>
<td>16.16.820(D)(1)(a)</td>
<td>Added a clarifying sentence that “Row and berry crops do not qualify as low intensity.” Though this type of agriculture already falls within the moderate intensity by its definition, it was felt that it would be best just to clarify.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.820(D)(1)(c)</td>
<td>Added the ability for a Type 1 operation to do a custom (Type 2) plan if they so desired. Though it may take more work to develop, a custom plan done through the Whatcom Conservation District would allow an operator to use prescribed grazing of the vegetative filter strips. Otherwise they may get overgrown with invasive species (e.g., blackberries) which don’t provide the filtering action that herbaceous plants do.</td>
<td>N/A</td>
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<td>16.16.830(c)(1)</td>
<td>Deleted the small (incomplete) list of what one must ensure when building a new structure. Even under CPAL all new structures must be constructed in compliance with the applicable standard requirements of this chapter and the Whatcom County Code, and are thus addressed by other section.</td>
<td>N/A</td>
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<tr>
<td>16.16.830(c)(2)</td>
<td>Added a paragraph that explicitly states that a new or expanded drainage system cannot be added via CPAL. This was already the case, but the TAC recommends it be explicit.</td>
<td>N/A</td>
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<tr>
<td>16.16.830(c)(3)</td>
<td>Added a sentence that explicitly states that undeveloped land cannot be converted to agricultural uses via CPAL. This was already the case, but the TAC recommends it be explicit.</td>
<td>N/A</td>
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<td>16.16.840(A)(1)(b) (iii)</td>
<td>The TAC recommends adding a requirement to install hedgerows along streams where no vegetation exists and the DOE has issued a temperature TMDL or it is listed on the 303(d) list as impaired for temperature. While Type 1 farm plans already included requirements to add vegetative filter strips along waterbodies where plants are absent (for water quality issues), it did not address temperature degradation associated with barren streams often found in our agricultural areas. The TAC believes this needs to be addressed, and tied it to temperature impairment. However, the CAC recommends against adopting this, as the cost of installing hedgerows would in all probability keep people from participating in the CPAL program. The P/C deleted this provision.</td>
<td>Developed by TAC members</td>
</tr>
<tr>
<td>16.16.840(A)(5)</td>
<td>Regarding the requirement to retaining native vegetation in critical areas and their buffers, the phrase “to the extent practicable” is proposed to be stricken because the definition of ongoing ag says that no new area will be converted.</td>
<td>N/A</td>
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<td>16.16.850(B)</td>
<td>Tabularized the list of who can prepare what type of farm plan.</td>
<td>N/A</td>
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<td>16.16.850(C)</td>
<td>Incorporated PDS Policy PL2-85-001C into the code.</td>
<td>N/A</td>
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<tr>
<td>16.16.860(A)</td>
<td>Incorporated PDS Policy PL1-85-003Z into the code.</td>
<td>N/A</td>
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<td>16.16.860(B)</td>
<td>Added language that a planning advisor shall withdraw representation if they find “an imminent threat to public health or significant pollution with major consequences occurring as a result of the agricultural operations.” GBoggs stated that the WCD will not report violations, as it must strictly guard its reputation for confidentiality; otherwise, no one would invite them onto their farms and participate in the program. However, they are not obligated to continue to represent the farmer.</td>
<td>N/A</td>
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<td>16.16.860(C)</td>
<td>Incorporated text from PDS Policy PL1-85-003Z into the code.</td>
<td>N/A</td>
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<tr>
<td>16.16.860(D)(3)</td>
<td>Incorporated text from PDS Policy PL1-85-003Z into the code. Also added 16.16.860(D)(3)(c), as the TAC wanted to make sure that if a farm changes from a pasture to a field crop or a field crop to a dairy, for example, it’s clear that a new farm plan is needed.</td>
<td>N/A</td>
</tr>
<tr>
<td>16.16.860(D)(4)</td>
<td>The WCD recommended adding this text to the list of conditions under which a conservation farm plan is no longer considered valid and a new one must be prepared.</td>
<td>N/A</td>
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<tr>
<td>16.16.860(E)</td>
<td>Incorporated text from PDS Policy PL1-85-003Z into the code.</td>
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Questions?