

Jessi Roberts

From: Matthew Mahaffie
Sent: Friday, November 13, 2015 12:06 PM
To: Cliff Strong
Cc: GBoggs@whatcomcd.org
Subject: RE: CPAL code edits
Attachments: CPAL - WS OG edits 2015-11-13-MMM.docx

Cliff,

Please see attached for my CPAL edits.

Thanks,

Matt Mahaffie

From: Cliff Strong
Sent: Friday, November 13, 2015 9:32 AM
To: George Boggs; Matthew Mahaffie
Subject: CPAL code edits

Hey George and Matt,

A TAC subcommittee has met and proposed the edits in the attached (also contains previous edits, including the CDC's, George). Can you guys review and give me your opinions? I would put it on the next TAC agenda (11/25), which means it has to go out next week.

Thanks,

Cliff Strong
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David Stalheim
Director

J.E. "Sam" Ryan
Assistant Director

Code Interpretation

Subject/Title: CAO Reasonable Use / SMP Variance - 2,500-Square
Foot Maximum Impact Area Policy

Number: PL5-85-001A

Effective Date: 04/17/08

Submitted By: Chad Yunge - Planner II - Natural Resources
Division

Reviewed By: Oliver Grah - Natural Resources Division Manager

Approved By: David Stalheim - Planning and Development
Services Director *DS 4-17-08*

Statement:

In the event that one or more of the following development proposals
are applicable:

- Single-family developments that cannot avoid impacts to critical areas and/or their protective buffers regulated by the Critical Areas Ordinance (CAO), a Reasonable Use Permit or Technical Administrator (TA) approval is required.
- Single-family developments that cannot meet required setbacks from Shorelines of the State pursuant to the Shoreline Management Program (SMP), a variance is required.

The maximum impact area shall be no more than 2,500 square feet. This impact area shall include the residential structure as well as appurtenant development that is necessarily connected to the use and enjoyment of a single-family residence. These appurtenant

developments include a garage, deck, driveway, utilities (exclusive of an on-site septic system), and all lawn/landscaping.

The following exceptions apply:

- On lots outside of SMP jurisdiction where an extended driveway is necessary to access a portion a development site with the least impact on critical areas and/or buffers, those portions of the driveway shall be excluded from the above 2,500 square foot maximum impact area provided the access road meets the standards of 16.16.620(E) or 16.16.720(C) as applicable. Any required parking areas shall be calculated as part of the 2,500 square foot maximum impact area.
- On lots within SMP jurisdiction where an extended driveway is necessary to access a portion of a development site with the least impact on critical areas and/or buffers, approval of those driveway portions shall be sought through a Shoreline Variance and demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site.

Rationale:

It is understood that a residential development on a legal lot zoned for residential use is a reasonable use of the lot in question. What is unclear is how large a residential development can be before it is no longer considered a reasonable use, and hence the rationale for this code interpretation. Without a maximum impact area for residential development on lots encumbered by critical areas and/or shoreline regulations, a property owner could propose a development of unlimited size and ultimately demonstrate a hardship and justify the need to encroach into such regulated areas.

The Whatcom County Council has already approved the rationale for this policy on February 27, 2007. The Council passed Agenda Bill AB2006-442 amending Whatcom County Code Title 23 – Shoreline Management Program (SMP); the official shoreline map; and associated provisions of WCC, Chapter 16.16 – Critical Areas Ordinance (CAO) to update the SMP in accordance with the requirements of Washington State Shoreline Guidelines (WAC 173-26) and other applicable local, state and federal environmental regulations. The SMP update is currently pending final approval through the Washington State Department of Ecology and is therefore not officially implemented at this time.

The updated SMP incorporates the CAO by reference in an attempt to better synchronize the two regulations to avoid redundancy as well as to ensure no net loss of ecological functions are incurred as a result of permitted development of shorelines. The above policy statement is consistent with the codified language outlined in Section 23.50.07(K) as follows:

New single-family development on non-conforming lots consisting of property under contiguous ownership less than 20,000 square feet in size and not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal erosion hazard areas or associated buffers as provided in WCC 16.16.310 may be allowed without a variance in accordance with the following criteria:

- 1. Non-conforming lots with a building area of 2,500 square feet or more available for a single-family residence and normal appurtenances and unrestricted by setbacks or buffers from shorelines or critical areas shall comply with the provisions of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances, and landscaping.*
- 2. Non-conforming lots that do not meet the requirement of subsection K.1 above shall provide the maximum setback and buffer dimension feasible while providing for a building area of at least 2,500 square feet on the portion of the lot farthest from the required setback or buffer.*

This policy would allow the CAO Technical Administrator and Shoreline Administrator to consistently apply the current regulatory requirements as detailed below:

Shoreline Management Program

23.110A.1 - Appurtenance means development that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and the perimeter of a wetland. Appurtenances include a garage, deck, driveway, utilities, fences and grading which does not exceed two hundred fifty cubic yards (except to construct a conventional drainfield).

23.60.181 - The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in the SMP where there are *extraordinary or unique circumstances* relating to the property

such that the strict implementation of the SMP would **impose unnecessary hardships on the applicant.**

23.60.182 – In all instances **extraordinary circumstances shall be shown**, and the public interest shall suffer no substantial detrimental effect.

23.60.183 – Variances for development that will be located landward of the OHWM and wetlands may be authorized, provided the applicant can demonstrate **all** of the following:

- (a) That the strict application of the bulk or dimensional criteria set forth in the SMP **precludes or significantly interferes with a reasonable permitted use of the property.**
- (b) That the hardship described is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions.
- (c) That the design of the project will be **compatible with other permitted activities in the area** and will not cause adverse effects to adjacent properties or the shoreline environment
- (d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and **will be the minimum necessary to afford relief.**
- (e) That the public interest will suffer no substantial detrimental effect.

23.60.185 – In the granting of all variances, consideration shall be given to the **cumulative environmental impact of additional requests** for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of the SMA and **should not produce significant adverse effects to the shoreline environment** or other users.

Critical Areas Ordinance

16.16.620(L) - Single-family developments may be permitted to encroach into wetland buffers subject to the Technical Administrator's approval provided that **all** of the criteria in WCC 16.16.270(A) are met.

16.16.620(E) - Access to private development sites may be permitted to cross Category II, III, or IV wetlands or their buffers, provided there are no feasible alternative alignments and measures are taken to maintain preconstruction hydrologic connectivity across the access road. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of RCW 8.24. Exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.

16.16.720(O) - Single-family developments may be permitted to encroach into stream buffers subject to the Technical Administrator's approval provided that **all** of the criteria in 16.16.270(A) are met.

16.16.720(C)(6) - Access to private development sites may be permitted to cross habitat conservation areas if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of RCW 8.24. Exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.

16.16.270(A)(1) - Nothing in this chapter **is intended to preclude all reasonable economic use of property**. If the application of this chapter **would deny all reasonable economic use of the subject property, use or development shall be allowed if it is consistent with the purposes of this chapter**.

16.16.270(A)(2) - To qualify as a reasonable use the Technical Administrator must find that the proposal is consistent with **all** of the following criteria:

- (a) There is no portion of the site where the provisions of this chapter allow reasonable economic use.

- (b) ***There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers.*** Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since the effective date of this chapter, change in use, **reduction in size**, change in timing of activity, **and/or revision of project design**;
- (c) *Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;*
- (d) *The proposed activities will not result in adverse effect on endangered, or threatened species as listed by the federal government or the State of Washington, or be inconsistent with an adopted recovery plan;*
- (e) *Measures shall be taken to ensure the proposed activities will not cause degradation of ground water or surface water quality, or adversely affect drinking water supply;*
- (f) *The proposed activities comply with all state, local and federal laws including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;*
- (g) *There will be no damage to nearby public or private property and no threat to the health or safety of people on or off the site;*
- (h) *The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after the effective date of this chapter; and*
- (i) *The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter.*

Jessi Roberts

From: Matthew Mahaffie
Sent: Wednesday, May 27, 2015 4:07 PM
To: Cliff Strong
Cc: Erin Page
Subject: Todays TAC
Attachments: cao-reasonable-use-pl5-85-001a-20080417.pdf

Cliff,

A couple thoughts from TAC meeting:

1) Please see attached for CAO 2500sf memo. Oliver and Lyn did a presentation on this 5 or 6 years ago to local critical areas consultants and this memo was handed out, so I know these standards are still floating around the public.

I will say though that at the time the way this was implemented was very heavy handed and did not necessarily follow the intent to well from what I saw (interpreted to mean 2500sf anywhere on a property, regardless of property size or location in regards to critical areas, was as far into the mitigation sequence that the staff at the time was willing to go).

2) Developed area vs. impervious surfaces. Using impervious surfaces solely leaves a lot of leeway for people and raises questions and options that the County may or may not want to consider. For example, gardens and flowerbeds are not impervious, but would still be an impact, the same for pervious paving options (a whole different discussion). Developed area accounts for the impact as a human action without a hard and fast definition. Or, alternatively, for stormwater, the State has stopped using the term *impervious surface* and replaced with *hard surface*.

Matt Mahaffie

16.16.290 Conservation program on agriculture lands (CPAL).

Ongoing agriculture activities shall be permitted within critical areas and/or their buffers in accordance with the standards of this chapter or pursuant to an approved conservation program established by this section, after showing that avoidance of critical areas or their buffers is not practicable. This program does not allow conversion of lands to agricultural use or authorize water quality violations. This program shall be subject to continued monitoring and adaptive management to ensure that it meets the purpose and intent of this chapter:

A. Agricultural activities that qualify for coverage under this section include:

1. Low-impact/intensity farm and/or livestock operations where critical areas are protected against the potential negative impacts of agricultural activities through the implementation of an approved standard farm conservation plan prepared in accordance with Appendix A, Section 1, of this chapter; or
2. Moderate or high-impact/intensity farm and/or livestock operations and/or where there is an increase in intensity from low to mod or high, where critical areas are protected against the potential negative impacts of agricultural activities through the implementation of an approved custom farm conservation plan prepared in accordance with Appendix A, Section 2, of this chapter.

B. The following additional requirements shall apply:

1. A farm conservation plan shall not shall not authorize filling, draining, grading, ~~or clearing, or tilling greater than 12"~~ activities within critical areas or buffers;
 - a. ~~except o~~Only on existing agricultural land where such activities are a demonstrated # essential part of the ongoing agricultural use, and part of routine maintenance and;
 - b. ~~d~~Do not expand the boundaries of the existing agricultural use or further alter groundwater or surface water flow; provided and,
 - a-c. When BMPs are used that impacts are mitigated in accordance with an the approved farm conservation plan.
 - b-d. The farm conservation plan shall not authorize construction of structures. New structures shall be constructed in compliance with the applicable provisions standard requirements of this chapter and the Whatcom County Code. landowner shall ensure that all of the following are met:
 - a. Siting of structures shall not result in surface or groundwater contamination.
 - b. Dust, odor, and noise concerns attendant to the use of the improvement shall be mitigated.
 - c. Impermeable surfaces such as building roofs, roads, and yards shall not change the flow, volume, and/or direction of runoff, or cause erosion or downstream flooding, pursuant to clearing and grading regs.

C. Farm conservation plans shall be subject to County review, approval, monitoring, adaptive management, and enforcement in accordance with the following:

1. The technical administrator shall review and approve the farm conservation plan. The following entities may provide technical assistance and recommendations regarding a farm conservation plan:
 - a. For low intensity ag, farm plans may be prepared by the proponent, a qualified consultant, The CD or a qualified planning advisor.

Comment [WS1]: CPAL Needs to be updated to address berries and row crops-please address?

Comment [WS2]: Oliver asks should we limit this to farms who do not have violations/ discharges to avoid the "forgiveness" path.

Comment [MM3]: Regarding Oliver's comment: not feasible or practical to the program to implement.

Comment [MM4]: Reference to buffers should be stricken from CPAL section. There are no buffers. Buffers are protective measures for critical areas from development projects.

Comment [WS5]: TAC/ CAC discuss

Comment [MM6]: Not a practical requirement for ongoing ag, there is no project that would be avoidable, it is a use already in place.

Comment [WS7]: Define low and med and high intensity for row crops and ag.- Article 8.

Comment [CT8]: Low-intensity rather than low-impact would be a much better way to characterize these operations;

Comment [CT9]: a farm with < 1 AU/AC may have a high impact on critical areas in spite of the fact that nutrients produced on the farm are relatively low compared to a commercial dairy

Comment [WS10]: include in defn of exist ag

Comment [MM11]: Referencing discussion on differences in routine tilling vs. grading, other jurisdictions use 12" of topography change for defining grading activities, don't think it should imply routine tilling of any depth as regulated. However, non-routine deep ripping should perhaps be addressed.

Comment [WS12]: Does an approved farm plan, infer having a permit??

Comment [WS13]: need definitins

Comment [WS14]: TAC/ CAC discuss

Comment [CAC15]: RFC: To make the language positive, rather than negative.

Comment [WS16]: tac/cac discuss

Comment [WS17]: TAC/CAC discuss- should this be kep in or not?

Comment [CAC18]: RFC: All of these (and other requirements) are already addressed by other sections of the WWC.

Comment [MM19]: Addressed above in B.1.d.

- a. For mod and high intensity ag, the CD or a qualified planning advisor shall be required to prepare a farm plan. The Whatcom Conservation District; or,
- b. A watershed improvement district for a farm or ranch that is within its boundaries; or,
- c. A qualified planning advisor as defined by this chapter.
2. The farm operator can seek farm plan approval directly through the department, or grant permission to the Whatcom Conservation District to prepare and submit it. If the farm plan is prepared by the District, a site visit by the department is not required. If the farm plan is prepared by the farm operator or a qualified consultant, the department will conduct a site visit prior to plan approval in order to assess critical areas and sufficiency of the plan to protect water quality and critical areas.
3. With one limited exception, Whatcom County will not use Farm Plans (standard or custom) as an admission by the landowner that he or she has violated this Chapter. Neither disclosure of current farm practices, nor structures on Farm Plan documents, nor observations made through monitoring inspections or Farm Plan approval, will be used to bring other enforcement actions against a farm operator. When matters of ~~except for~~ major life, health, environment, or safety issues, as determined by the Director/Technical Administrator are observed and the landowner fails to immediately and permanently remediate, then the observations may be used in an enforcement action.
- 2-4. The technical administrator and/or the farm operator shall periodically monitor plan implementation and compliance beginning one year after plan approval and every two years thereafter, through the life of the plan, or more frequently at the TA's discretion. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. Self-certification, for a time period of up to every 5 years, is allowed if a farm plan is prepared by the Whatcom Conservation District or qualified Planning Advisor, or if the farm plan is for a low-intensity farm, and approved by the department. If a sufficient self-certification monitoring report (must include photos and implemented Best Management Practices) is not submitted within 30 days of request, County staff may make a site visit. Site visits will be coordinated with the landowner/farm operator. Prior to carrying out a site inspection, the technical administrator shall provide reasonable notice to the owner or manager of the property as to the purpose or need for the entry, receive confirmation, and afford at least two weeks in selecting a date and time for the visit. At the landowner's/farm operator's discretion, staff may be accompanied by the planning advisor or Whatcom Conservation District planner.
- 3-5. Where the planning advisor has reason to believe that there is an imminent threat to public health or significant pollution with major consequences occurring as a result of the agricultural operations, ~~a~~ the planning advisor will advise the agricultural operator of his or her concerns in writing, and will notify the TA in writing. While the planning advisor may provide suggestions for resolving the issue, the responsibility for compliance and resolution of issues rests solely with the farm operator. If compliance issues are not resolved, the planning advisor will may report such situations to the technical administrator for subsequent action and enforcement in accordance with WCC 16.16.285.

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Comment [WS20]: How will PDS ensure that CD will adequately id'd wetlands and channelized streams

Comment [CES21]: RFC: Incorporated from PDS Policy PL1-85-001C.

Comment [CES22]: RFC: Incorporated from PDS Policy PL1-85-003Z.

Comment [CAC23]: RFC: PDS wants to encourage farmers to obtain farm plans. To this end, our policy has been to not use obtaining one as a vehicle to find other code violations. However, it is possible that something could be occurring that we simply cannot ignore.

Comment [WS24]: TAC/CAC discuss; doesn't this perpetuate poor practices. that contribute to water quality deg in Portage Bay and Drayton Harbor.

Comment [WS25]: TAC/CAC discuss

Comment [CES26]: RFC: Incorporated from PDS Policy PL1-85-003Z.

Comment [MM27]: Original wording was applicable and workable. As written, cannot be followed through with over time.

Comment [CS28]: Shouldn't this be the Technical Administrator? Planning advisor is a consultant hired by the farm operator. Why would it be up to him/her to make this judgment call?

Comment [WS29]: TAC/ CAC discuss

Comment [GB30]: The purpose of this clause was to create a duty to raise the issue and give the advisor the basis for declining to perpetuate something of consequence that needed to be attended. It also makes it clear that the landowner needs to correct. These conversations would probably never get to the Technical Administrator. One could go further in mandating that the planning advisor withdraw from representation if the landowner refuses to correct.

6. The farm practices described in an approved Farm Plan will be deemed to be in compliance with this Chapter so long as the landowner/farm operator is properly and fully implementing the practices and responding to possible adaptive management requirements. If the farm plan is found to be not protective of the critical areas in the approved Farm Plan according to the timeline in the plan, then there shall be immediate rectification in cooperation with PDS and the farm planner. This will be verified through Farm Plan implementation monitoring. In the absence of immediate rectification, the ag operator will not qualify under CPAL, and will be subject to standard regulations.

Comment [CES31]: RFC: Incorporated from PDS Policy PL1-85-003Z.

4.7. Agricultural operations shall cease to be in compliance with this section when the technical administrator determines that any of the following has occurred:

- a. A farm or ranch operator fails to properly and fully implement and maintain their farm conservation plan.
- b. When implementation of the farm conservation plan fails to protect critical areas. If so, a new or revised conservation plan shall be required to protect the values and functions of critical areas at the benchmark condition.

c. When substantial changes in the agricultural activities of the farm or livestock operation have occurred that render the current farm conservation plan ineffective. Substantial changes that render a farm plan ineffective are those that:

1. Degrade baseline critical area conditions for riparian and wetland areas that existing when the plan was approved; or,
2. Result either in a direct discharge or substantial potential discharge of pollution to surface or ground water; or,
3. The type of agricultural practices change from low to medium, or medium to high intensity uses.
4. In such cases a new or revised conservation plan will be required to meet the purpose and intent of this section.

Comment [CES32]: RFC: Incorporated from PDS Policy PL1-85-003Z.

Comment [WS33]: What about the policy piece regarding location of surface waters. Please explain this,

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d. When a new or revised farm conservation plan is required pursuant to either subsection (C)(47)(b) or (c) of this section, the technical administrator and the owner has been so advised the owner in writing, and a reasonable amount of time has passed without significant progress being made to develop said plan, then.... Refusal or inability to provide a new plan within a reasonable period of time shall be sufficient grounds to revoke the approved conservation plan and require compliance with the standard provisions of this chapter.

Comment [CAC34]: RFC: 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.

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e. When an owner or manager denies the technical administrator reasonable access to the property for technical assistance, monitoring, or compliance purposes, then the technical administrator shall document such refusal of access and notify the owner of his/her findings. The owner shall be given an opportunity to respond in writing to the findings of the technical administrator, propose a prompt alternative access schedule, and to state any other issues that need to be addressed. Refusal or inability to comply with an approved farm conservation plan within a reasonable period of time shall be sufficient grounds to revoke said plan and require compliance with the standard provisions of this chapter.

Comment [WS35]: This is not a sentence

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9. Farm Conservation plans prepared pursuant to this section will not be open to public inspection disclosure unless:
- a. rRequired by law;
 - b. The plan is to be used for the application or issuance of a permit; or,
 - c. The landowner/farm operator has given written permission to disclose; or,
 - d. The plan is developed for a dairy, animal feeding operation, or concentrated animal feeding operation and not required to apply for a National Pollution and Discharge Elimination System permit.

Provided, that the County will collect summary information related to the general location of a farming enterprise, the nature of the farming activity, and the specific best management practices to be implemented during the conservation plan review process. The summary information shall be provided by the farm operator or his/her designee and shall be used to document the basis for the County's approval of the plan. Plans shall also be subject to disclosure if required by a court of competent jurisdiction. Upon request, the County may provide a sample conservation plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation plan. (Ord. 2005-068 §1)

Comment [MM36]: All covered by WAC 16-06-210 which is much more involved. This disclosure list is not compliant with the WAC/RCW. If disclosure discussion is needed, referencing WAC would be best.

Comment [CES37]: RFC: Incorporated from PDS Policy PL1-85-002Z.

Comment [WS38]: TAC/CAC discuss

Purpose Statement

The well-being of farms and ranches in Whatcom County depends in part on good quality soil, water, air, and other natural resources. Agricultural operations that incorporate protection of the environment, including critical areas [and their buffers](#) as defined by this chapter, are essential to achieving this goal.

Comment [MM39]: Buffers not applicable to CPAL.

Overview

A conservation farm plan identifies the farming or ranching activities and the practice(s) necessary to avoid their potential negative impacts (resource concerns). Practice selection depends upon the types of livestock raised and crops grown. Based upon the type and intensity of the operation, some generalizations can be made as to the resource concerns and remedies that apply.

Some operations present relatively low risks to critical areas because of their benign nature, timing, frequency, or location. For these operations, the resource concerns and remedies are relatively easy to identify and implement. These are described in more detail as [low-impactintensity](#) agricultural operations subject to standardized farm conservation plans in Section 1 below.

Comment [CT40]: low-intensity

Where the potential negative impacts to critical areas are moderate or high, solutions are more difficult to formulate and implement. In those circumstances, a more rigorous planning process is required. In such cases, a formal written plan shall provide the desired environmental protection. These types of operations are described as agricultural operations requiring custom farm conservation plans in Section 2 below.

Farm conservation plans prepared pursuant to Section 1 or 2 shall include all reasonable measures to maintain existing critical area functions and values.

Section 1. ~~Low-Impact~~[Intensity](#) Agricultural Operations Subject to Standardized Farm Conservation Plans

These operations present a low potential risk to critical area degradation including ground/ surface water contamination because the animals kept generate fewer nutrients than can be used by the crops grown there.

1. Criteria. To qualify as a low [impact intensity](#) operation, a farm shall not exceed one animal unit per one acre of grazable pasture. [Row and berry crops do not qualify as low intensity.](#) One resource for guidance is *Tips on Land and Water Management for Small Farm and Livestock Owners in Western Washington*. It can be obtained at: http://www.kingcd.org/pub_sma.htm or from the Whatcom Conservation District's website: <http://www.whatcomcd.org/small-farm>.

Comment [MM41]: Not really applicable for code.

Other guidance may also be used, provided it is consistent with the best available science criteria in WAC [365-195-900](#) through [365-195-925](#).

2. Benchmark System and Resource Concerns. Keeping horses and other large animals creates potential adverse impacts to critical areas.
 - a. Nutrient Pollution of Water. Animal waste contains nutrients (nitrogen and phosphorous). With each rain, these wastes can wash off the land and into the nearest stream, lake, or wetland. In surface water, phosphorous and nitrogen fertilize aquatic plants and weeds. As the plants and weeds proliferate and decay, the dissolved oxygen that fish need to survive is depleted. Nitrogen in the form of nitrate is easily dissolved in and carried with rainfall through our permeable soils to groundwater. Nitrate concentrations exceeding the maximum contaminate level for safe drinking water are found in many wells of Whatcom

County. These can present a significant human health risk, particularly to the very old and young.

- b. Pathogen Pollution of Water. Manure contains bacteria and other pathogens. These can make the water unfit for drinking without treatment or shellfish unfit for human consumption. They can also make water unsafe for human contact and recreational sports such as fishing, swimming or water skiing. Both surface and groundwater are vulnerable to this type of pollution.
 - c. Sediment Pollution to Surface Water. Regardless of the amount of supplemental feed provided, large animals will continue grazing until all palatable vegetation is gone. On especially small lots (one or two acres), the animals that are allowed free and continuous access to vegetation quickly graze-out and trample pasture grasses and forbs. These areas are then susceptible to invasion by weeds, including noxious weeds, and brush. The resulting bare ground is subject to erosion from wind and water. Lands that lack adequate vegetation are subject to erosion, and contaminated runoff from these areas can enter water bodies and wetlands and interfere with fish and wildlife habitat.
 - d. Degradation of Riparian Areas. The term “riparian” is defined in Article 8 of this chapter and includes the areas adjacent to streams, lakes, marine shorelines and other waters. A healthy riparian area is essential to protecting fish and wildlife, including salmon and shellfish. Dense riparian vegetation along the water’s edge will slow and protect against flood flows; [provide infiltration/ filtering of pollutants](#), secure food and cover for fish, birds and wildlife; and keep water cooler in summer. Uncontrolled grazing removes important riparian vegetation.
3. Standard Farm Conservation Plan Requirements. Owners of low-~~impact~~[intensity](#) livestock operations have limited options to control animal waste because their operations are small. The required farm conservation plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to protect water quality, and the following additional components:
- a. System Siting and Design. Barns, corrals, paddocks or lots are to be sited to avoid runoff directly into critical areas. Where structures exist [in critical areas or buffers](#) and cannot be relocated, corrective measures must be taken to avoid runoff of pollutants and bacteria to critical areas. Where trees and shrubs are absent along a [regulated ditch](#), stream, lake, pond or wetland, a strip or area of herbaceous ~~vegetation~~ shall be established and maintained between barns, corrals, paddocks, and grazing areas pursuant to the [USDA National Natural Resource Conservation Service’s \(NRCS\) Conservation Practice 393, “Filter Strip.”](#) [Livestock shall be excluded from the filter strips vegetate established to protect critical areas pursuant to NRCS Practice 472, “Livestock Exclusion Access Control.”](#) Where trees and shrubs exist along a stream, lake, pond, or wetland, they shall be retained and managed to preserve the existing functions of the buffer pursuant to the NRCS Conservation Practice 391, “Riparian Forest Buffer.”
 - b. Manure Collection, Storage, and Use. Manure and soiled bedding from stalls and paddocks are to be removed and are to be placed in a storage facility protected from rainfall so that runoff does not carry pollutants and bacteria to critical areas. ~~If Manure~~[manure](#) is to be

Comment [MM42]: No development buffers should be referenced in CPAL

Comment [MM43]: No such thing. Understand point, but is confusing and comes under definition of stream.

Comment [CT44]: use “Vegetative Filter Strip” instead of Filter Strip

Comment [CT45]:

Comment [CT46]: USDA’s Buffer Width Design Tool for Surface Runoff found in the publication *Conservation Buffers Design Guidelines for Buffers, Corridors, and Greenways*

Comment [CT47]: there no longer a Livestock Exclusion practice; it’s now called Access Control (472)

Comment [WS48]: Discuss NRCS practices and how they compare to BAS and provide same level of protection as standard regulations. Please provide technical documents that substantiate the NRCS conservation practice effectiveness

used as cropland fertilizer. ~~The the rate~~ and timing of manure application shall not exceed crop requirements, or cause surface or groundwater water quality degradation. It is to be applied in a manner to avoid runoff of nutrients and bacteria to critical areas.

- c. Pasture Management. Pastures are to be established and managed pursuant to “Prescribed Grazing” (NRCS Practice 528A).
- d. Exercise or Barn Lots. These normally bare areas must be stabilized and managed to prevent erosion and sediment movement to critical areas. A diversion terrace shall be installed, where necessary, to hinder flow to and across the lot or paddock. Runoff from the lot must be treated via the filter strip or riparian buffer as described in subsection (3)(a) of this section to avoid contaminants reaching critical areas.

e. Existing native vegetation within critical area buffers shall be retained, to the extent practicable.

e.f. The rate and timing of chemical additions, including fertilizers, fungicides and pesticides, shall not cause water quality degradation in surface or ground water.

Comment [CT49]: Vegetative Filter Strip

Comment [MM50]: Already covered in WCC 16.16 and WCC 20.80

Comment [WS51]: stricken because the definition of ongoing ag says that no new area will be cleared per 16.16.290 B1

Section 2. Moderate to High Impact Intensity Agricultural Operations Requiring Custom Farm Conservation Plans

These operations present a potential moderate or high risk to critical area degradation including ground or surface water contamination because the nutrients applied from manure or commercial fertilizers may exceed that which can be easily used by the crops grown there without careful planning and management. The agricultural activities are also likely to be much more intense than low-impact intensity operations posing greater potential risks to other critical areas.

1. Moderate-Impact Intensity Operations. Examples include farms that exceed one animal unit per one acre of grazable pasture; orchards, vineyards, small fruit field and row crops; and drainage improvement districts.
2. High Impact Intensity Operations. Examples include dairies and animal feeding operations/concentrated animal feeding operations (AFO/CAFOs). These operations are already highly regulated by state and federal governments (see Chapter 90.64 RCW et seq.; 40 CFR 122.23 and 40 CFR Part 412).
3. Custom Farm Conservation Plan Requirements.
 - a. Moderate-Impact Intensity Operations. Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to mitigate same by:
 1. A planning advisor; or
 2. Through the USDA Natural Resources Conservation Service; or
 3. The Whatcom conservation district; or
 4. An eligible farmer or rancher, who participates in this program by:
 - Attending a County-sponsored or approved workshop, and
 - Conducting a risk assessment of their farm or ranch, ~~alone or~~ with a planning advisor’s assistance, and
 - Developing a plan to mitigate any identified risks, and
 - Having the plan approved pursuant to WCC 16.16.290.
 - b. High-Impact Intensity Operations. Farm conservation plans meeting the criteria of these state and federal laws fulfill the requirements of this chapter. (See USEPA Final Guidance –

Comment [WS52]: Definition? WID?

Comment [MM53]: Defined per RCW

Comment [WS54]: How is the change of use/intensity from pasture to row crop treated? This change represents high impact. Shouldn't some row crops be considered high intensity, based on rate of manure and pesticide application? documented Sumas/ Abbotsford aquifer pollution due to berries

Managing Manure Guidance for Concentrated Animal Feeding Operations (CAFOs) at:

<http://epa.gov/guide/cafo/>

4. Plan Standards. In developing the elements that an approved farm conservation plan must contain, the technical administrator may authorize the use of methods and technologies other than those developed by the Natural Resources Conservation Service when such alternatives have been developed by:
 - a. A land grant college; or
 - b. A professional engineer with expertise in the area of farm conservation planning.
5. Plan Performance. Implementation of the farm conservation plan must protect existing values and functions of critical areas [and prevent water quality degradation](#). Benchmark conditions are to be captured and described in the plan. This may consist of photo documentation, written reports or both.
6. Treatment of Wetlands. Wetlands shall be conserved pursuant to the provisions of Title 180 – National Food Security Act Manual (see <http://www.nrcs.usda.gov/programs/wetlands/index.html>).
7. Custom farm conservation plans need not address the application, mixing and/or loading of insecticides, fungicides, rodenticides and pesticides; provided, that such activities are carried out in accordance with the Washington State Department of Agriculture and all other applicable regulations including, but not limited to: the provisions of Chapter [90.48](#) RCW, the Clean Water Act, United States Code (USC) Section 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act), Chapter [15.58](#) RCW (Pesticide Control Act), and Chapter [17.21](#) RCW (Pesticide Application Act). (Ord. 2005-068 §1)

Comment [WS55]: need similar guidance for berries

Comment [MM56]: Links and outside literature changes, shouldn't reference in code unless absolutely necessary.

Comment [WS57]: Is this consistent with BAS?

Comment [MM58]: No other way to do it for lands that qualify with ongoing ag. (would be in violation of federal statute) Does not apply to development.