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**J.E. "Sam" Ryan**  
Director

**Memorandum**

TO: The Honorable County Council  
Jack Louws, County Executive

FROM: Cliff Strong, Senior Planner *CS*

THROUGH: Mark Personius, Asst. Director *MP*

DATE: June 1, 2017

SUBJECT: 2016 Critical Areas Ordinance Update  
County Council Review Workshop on June 13, 2017

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On June 13<sup>th</sup>, the Council will continue its review of the 2016 Critical Areas Ordinance Update. Topics to be covered include:

- Review of certain questions, comments, and suggestions by Council members related to:
  - Article 5, Critical Aquifer Recharge Areas
  - Article 8, Conservation Program on Agriculture Lands
  - Article 9, Definitions

To prepare for this meeting, please review this memo. In it, I have merged the remaining Council questions and issues from your last two memos and removed the ones you've already covered; however, I have retained the original Issue numbers in order to keep them straight (even though they're out of order now). Yellow highlighting in the text indicates a Councilperson's proposed amendments.

## Questions, Comments, and Suggestions by Council Members

### Article 5. Critical Aquifer Recharge Areas

#### ISSUE 118. (Weimer)

Add a new Section 16.16.540 to read:

##### **16.16.540 Activities Subject to Conservation Farm Plans**

Agricultural activities covered under 16.16.820 in moderate or high susceptibility critical aquifer recharge areas shall develop conservation farm plans as specified in 16.16.840 to protect critical aquifer recharge areas.

**Staff Response:** Staff does not recommend making Conservation Farm Plans mandatory for all agricultural activities in CARAs for several reasons.

Currently the CPAL program is a voluntary program for ongoing agriculture only; new agriculture must meet the standard requirements of the CAO. Half of the county (236,480 of 472,159 acres) is in a moderate or high susceptibility critical aquifer recharge area; with 92.2% of the Ag zone (76,475 of 82,966 acres) in one or the other. Agriculture is also allowed in other zones (e.g., Rural). Overall, there are 40,603 parcels with an agricultural use on them in a moderate or high susceptibility critical aquifer recharge area, and all told we have 1,702 farms. (See map, below.) Adding this section would make farm plans mandatory for *all* farms in moderate or high susceptibility CARAs, potentially one for each of the 1,702 farms. To date, all 101 certified dairies and approximately 102 small farms have approved conservation farm plans, leaving roughly 1,500 currently without farm plans. Neither PDS nor the Whatcom Conservation District has the resources to process this number of farm plans. In Whatcom County, we only have 1 qualified consultant, 1 Certified Farm Planner in PDS, and 2/3 Certified Farm Planner at the Whatcom Conservation District. We estimate that we'd need at least 3-4 more FTEs to process, monitor, and enforce farm plans on all farms.

Requiring all farms to participate in the CPAL program would also allow new agriculture to modify the standard critical areas requirements, when the program was intended to apply only to areas with critical areas that had already, historically been impacted by farming. Allowing new agriculture to modify the standards in new areas would lead to a loss of functions and values.

Additionally, we already require that farms manage their nutrients via WCC 16.28 (Manure and Agricultural Nutrient Management), which regulates the amount, location, method, and timing of nutrient application. There are no additional BMPs that could be applied short of having a staff monitor at each of the farms during nutrient application or count animal units (including weekends and after hours).

A different way to achieve Councilmember Weimer's intent may be to amend the threshold for when a Land Disturbance Permit (LDP) is required for substantial grading (in WCC 20.80.733) to mimic that of our stormwater regulations. The suggestion below would continue to exempt most standard agricultural practices from having to obtain an LDP, but would require anyone substantially altering the topography (+/- 1 foot) to obtain an LDP, which typically occurs for dairy-to-berry conversions. Remember that obtaining a permit is one of the triggers for being subject to the CAO or having to obtain a farm plan. We (or the Whatcom Conservation District) could then work with that new berry farmer to develop a farm plan and educate them on BMPs.

**20.80.730 LAND CLEARING.**

**20.80.733 Exemptions.**

Any clearing activity that meets the following criteria shall be exempt from the clearing requirements of this chapter:

(1) The proposed activity does not involve the conversion of forest land, is outside critical areas and associated buffers, and is exclusively related to commercial agriculture practices (as defined in the 2012 Washington State Department of Ecology Stormwater Management Manual for Western Washington, as amended) as defined in this title;

**Article 8. Conservation Program on Agriculture Lands**

**General CPAL Questions**

**ISSUE 119. (Donovan)**

*Does this update improve the CAO's ability to protect the values and functions of critical areas, as required by law?*

**Staff Response:** As proposed, overall it does. However, unless Council makes some additional changes to the CPAL program, nothing changes for that, as the Planning Commission-recommended CPAL language doesn't really change (the amendments only combine various sections to read better). Nonetheless, previous Councils found that our current regulations *do* protect the functions and values of critical areas, and our CPAL program has been used as a model for other counties.

**ISSUE 120. (Donovan)**

*(a) If a farm does not have critical areas, does it need a farm plan? (Policy PL1-85-004Z, May 6 2010). (b) What if near a critical area? (c) What if a farm has the potential to affect ground or surface water beyond that farm? (d) What if a person works to implement a farm plan to deal with critical areas on their farm, but those areas are affected by a neighboring property that does not have a farm plan?*

**Staff Response:** (a) No, the CPAL program is a voluntary program and applies only to ongoing agriculture in critical areas or buffers; new agriculture must adhere to the standard CAO requirements.

(b) Pursuant to 16.16.255(H)(2), a critical areas assessment must provide written description of the critical areas and buffers on or in the vicinity of the site.

(c) If Best Management Practices are implemented so as to not affect ground or surface water *on* a particular farm, then it shouldn't affect waters *beyond* that farm.

(d) As mentioned, the CPAL program is voluntary, and it is triggered when someone applies for a permit (e.g., building, Land Disturbance Permit, etc.) or is referred through the Whatcom County's Pollution Identification program, the Department of Ecology's Environmental Report Tracking System (ERTS) program, or a citizen complaint, whereupon we start an enforcement case.

**ISSUE 121. (Donovan)**

*How do we know if these things work, how are they monitored, what enforcement if they don't work?*

**Staff Response:** Pursuant to WCC 16.16.860, PDS inspects BMPs to make sure they are implemented properly per the farm plan. We then monitor the farm plan as appropriate to ensure that the BMPs continue to be implemented. If they don't work, the plan is adapted or referred to code enforcement.

Additionally, the Whatcom Conservation District is currently testing BMPs on 6 sites as to their effectiveness.

### **ISSUE 122. (Donovan)**

*Does this Article adequately recognize science (in the 2005 BAS report, and more recent work) showing that manure nutrient loading from Whatcom County? From one abstract: “Only four wells showed a decreasing trend in nitrate and 14 of the 26 wells had medians above the nitrate MCL of 10 mg N/L. Values of  $\delta$  15N measured from wells validate that the source of the nitrate is a mix of organic manure and inorganic commercial fertilizer; however, the manure component was higher.” [I don’t know how many wells in BC vs. Whatcom Co.]*

**Staff Response:** Yes, PDS believes the CAO update adequately recognizes the Best Available Science regarding manure nutrient loading. See **Error! Reference source not found.**, page **Error! Bookmark not defined.**, and **Error! Reference source not found.**, page **Error! Bookmark not defined.**, above. A previous Council had the same BAS and chose how we respond to it. (The 2005 BAS report had 5 recommendations for code changes, all of which were made.)

### **ISSUE 123. (Donovan)**

*Without baseline data, how do we know if these things are working? By working, I mean not degrading the values and functions of critical areas?*

**Staff Response:** PDS’s position has been that if each individual farmer/property owner is not degrading critical areas on their farms/property (using the BMPs that have been deemed to be adequate to protect critical areas functions and values), then overall critical areas’ functions and values are not being degraded. This is the premise on which all jurisdictions operate for all mitigation strategies.

This has been borne out by the results of Washington Department of Fish and Wildlife’s High Resolution Change Detection Project<sup>1</sup>, which shows that between 2006 and 2011, in the entire County there has only been a 3% decline in vegetative cover within 200 feet of our waterbodies (streams, lakes, and coast), of which only 0.37% was due to development related activities over which the COA has jurisdiction.

Additionally, per WCC 16.16.860, PDS and the Whatcom Conservation District continually monitor the BMPs installed pursuant to a Farm Plan.

### **ISSUE 124. (Donovan)**

*Where are BMPs defined? Do the BMPs defined in Article 9 (“control”, “minimize”) meet GMA legal standards?*

**Staff Response:** “Best Management Practices” are defined in 16.16.900 and are presumed effective. The text of this Article further refers to “NRCS BMPs” or NRCS Conservation Practices.” These have been found to constitute Best Available Science by the Growth Management Hearings Board in *WEAN v Island County, Final Decision & Order* (BAS document # 68) and further supported by BAS document #69 (*Letter to the Island County Planning Commission from Assistant Director Jeff Tate, explaining their review of NRCS Best Management Practices constituting Best Available Science*). Further, the NRCS’s *Field Office Technical Guide* was reviewed and cited in our BAS Addendum (BAS document #72).

<sup>1</sup> BAS Addendum Report, document #22.

**ISSUE 125. (Donovan)**

*The 2005 BAS report (Parametrix) stated “We recommend conducting a best available science review specifically targeted on the methods for developing the conservation plans and requirements of the CPAL Program, including monitoring of success and effectiveness. Conversion of agricultural land to other uses should trigger review under the Critical Areas Ordinance. Institute a program to monitor conservation plan implementation once developed.” Sounds like we need to do that.*

**Staff Response:** We did do that. As mentioned for Issue 121, PDS monitors conservation farm plan implementation pursuant to 16.16.290(C) (existing code), the text of which is proposed to be moved to 16.16.860 (proposed code).

**ISSUE 126. (Donovan)**

*Why delete the old 16.16.290 language? The original language, with minor edits, seems a better statement of purpose:*

**16.16.800. Purpose.**

B. Ongoing agricultural 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~~ Article. Under this program agriculture is afforded more flexibility but only if farmers are good stewards of the land. This ~~is more than growing crops and livestock: It necessarily includes protecting critical areas~~ and their functions and values.

**Staff Response:** Paragraph A of 16.16.800 was moved from Appendix A (where half of the CPAL regulations were found). Paragraphs B & C were originally in 16.16.290 but were moved here to consolidate all the CPAL regulations into one Article. Paragraph B was modified by the TAC as it read more like a regulation than a purpose statement, and they wanted to be more explicit about its purpose. The stricken sentence beginning with “Under this program...” and the clause “agreement with their community” was stricken by the Planning Commission. However, staff has no issue with CM Donovan’s suggestion.

**ISSUE 127. (Donovan)**

*The original language seems more appropriate, with minor edits:*

**16.16.810 Resource concerns.**

~~Keeping horses and other large animals have the potential to create~~ Keeping horses and other large animals ~~Agricultural operations have the potential to create~~ s potential ~~s potential~~ adverse impacts to critical areas, and to water quality. It is the County’s policy to minimize such impacts.

**Staff Response:** This sentence was amended because there are a lot more agricultural practices than just keeping horses and other large animals that have the potential to impact critical areas.

**ISSUE 149. (Brenner)**

**16.16.810 Resource Concerns.**

D. Degradation of Riparian Areas. The term “riparian” is defined in Article 9 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 and filtering of

pollutants; secure food and cover for fish, birds and wildlife; and keep water cooler in summer.

~~Uncontrolled grazing removes important riparian vegetation.~~

**Staff Response:** Staff does not recommend this change. This entire section is intended to identify the rationale behind our CPAL regulations. Each of the paragraphs identifies a concern and how agricultural practices, if poorly-managed, can harm that resource. Removing just sentence removes the nexus of why we’re trying to protect riparian areas in agricultural areas.

### ISSUE 150. (Brenner)

#### 16.16.820 Classification and Applicability.

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

1. ~~Type 1 Low impact farm or Livestock~~ Low impact farm or Livestock Operations.

**Staff Response:** Staff does not recommend this change. The Critical Areas Citizens Advisory Committee recommended renaming the farm operation types from low, moderate, and high impact to Type 1, 2, and 3 to avoid value-loaded words. Putting them back in for just one of the types isn’t consistent. If Council does want to revert for this one type, staff would suggest reverting all back to their original names (Low, Moderate, and High Impact Operations).

### ISSUE 128. (Weimer)

#### 16.16.820(D)(1)(a) – Type 1 Operations

*This section talks about “animal units” which are defined as 1,000 pounds of livestock live weight. How would this apply to smaller animals like sheep or chickens? How is this integrated with PDS Policy related to “animal thresholds” since that policy is not in the CAO or referenced?*

**Staff Response:** PDS Policy PL-1-85-004Z (CPAL – Animal Threshold, Resource Priority) doesn’t define what an animal unit is. That policy was put in place to prioritize staff time spent on CPAL. It basically says that PDS will not consider a farm in need of a Conservation Farm Plan if the farm (i) has fewer than 1 cow or horse; 2 sheep, alpacas, non-breeding pigs, or goats; 20 ducks or geese; or 30 chickens, (ii) has at least 3 grazable acres, and (iii) manages their animals to avoid direct discharge of sediment or fecal matter into surface waters.

In practice, animal unit equivalents are found in the Farm Plan Planning Workbook: Checklist and Action Plan, which is what an applicant uses to prepare a farm plan.

| Livestock                   | AU Factor             |
|-----------------------------|-----------------------|
| Dairy – Holstein cow        | 1.3                   |
| Dairy – Heifer, bred        | 1.0                   |
| Dairy – Heifer, prebred     | 0.4                   |
| Beef (cow & calf)           | 1.2                   |
| Beef – Feeder               | 0.7                   |
| Horse – (mature 1,200 lbs.) | 1.2                   |
| Horse – other               | lb. body weight/1,000 |
| Swine – Sow                 | 0.5                   |
| Swine – Grower              | 0.2                   |
| Sheep (ewe & lamb)          | 0.5                   |
| Llama                       | 0.3                   |
| Duck                        | 0.015                 |

|       |       |
|-------|-------|
| Layer | 0.01  |
| Fryer | 0.007 |

**ISSUE 129. (Weimer)**

*This section also says “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.” Is there BAS that supports this? Is there any review of whether actual practices regarding distribution of nutrients is done in such a way to not impact critical areas, especially CARAs?*

**Staff Response:** According to George Boggs, one animal unit/acre does not meet the nutrient requirements of forage crops. In a pasture-based operation the nutrients will be distributed in a dispersed manner because of how animals are grazed, such that there are no excess nutrients remaining to be leached down into groundwater. (The WCE can provide a calculation and supporting references for this proposition.) By following the Prescribed Grazing practice, surface water is protected from runoff. Here is some specific language from that Conservation Practice (528):

Additional Criteria to Improve or Maintain Surface and/or Subsurface Water Quality and Quantity.

Minimize concentrated livestock areas to enhance nutrient distribution and improve or maintain ground cover. Plan intensity, frequency, timing and duration of grazing and/or browsing to:

Minimize deposition or flow of animal wastes into waterbodies, Minimize animal impacts on stream bank or shoreline stability. Provide adequate ground cover and plant density to maintain or improve infiltration capacity and reduce runoff. Provide adequate ground cover and plant density to maintain or improve filtering capacity of the vegetation.

By following the prescriptions, animals are removed towards the end of the growing season to ensure that grass will provide an effective buffer to avoid transport to surface water.

Follow these links for BAS: [https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1045796.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045796.pdf) and [https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/energy/conservation/?cid=nrcs143\\_023633](https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/energy/conservation/?cid=nrcs143_023633).

**ISSUE 151. (Brenner)**

**16.16.820 Classification and Applicability.**

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

2. Type 2 Moderate Operations.

a. Type 2 operations are farms that **include, but are not limited to those that** exceed one animal unit per one acre of grazable pasture; farms that have orchards, vineyards, small-fruit field or row crops; and drainage improvement districts. These operations present a potential moderate 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 Type 1 operations, posing greater potential risks to other critical areas.

**Staff Response:** Staff is neutral.

## ISSUE 130. (Weimer)

### 16.16.820(D)(2)(a) – Type 2 Operations

*I don't see hay production lands included in this. Don't farmers spread manure or fertilizers and pesticides on those types of land? Wouldn't that require a plan?*

**Staff Response:** Type 2 includes “all other operations,” i.e. those that don't specifically fit into Type 1 or Type 3. It doesn't matter if the crop is apples, berries, potatoes, or hay (forage). Type 2 operations must complete a custom plan that addresses CARAS as well as stream riparian and wetlands. Attached is an example of a Type 2 for a berry operation.

## ISSUE 152. (Brenner)

### 16.16.830 Conservation Farm Plans – General Standards.

B. A conservation farm plan ~~shall~~may not authorize filling, draining, grading, or clearing activities within critical areas or buffers;

1. ~~except~~ Only on ~~existing ongoing~~ agricultural land where such activities are ~~an~~ demonstrated to be an integral essential part of the ~~ongoing~~ agricultural use or part of routine maintenance; and,

**Staff Response:** Staff does not recommend these changes. As explained previously, the CPAL program is intended to only apply to on-going agriculture; new agriculture *must* protect the functions and values of critical areas. This section is basically saying that certain activities (filling, draining, grading, or clearing activities within critical areas or buffers), where those activities have already been historically been performed, may continue to do so via a Conservation Farm Plan. New ag should not be allowed to do these things in new areas.

## ISSUE 153. (Brenner)

### 16.16.830 Conservation Farm Plans – General Standards.

C. ~~The~~ A conservation farm plan ~~shall not~~may authorize:

1. The construction of new 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:
  - ~~Siting of structures shall not result in surface or groundwater contamination.~~
  - ~~Dust, odor, and noise concerns attendant to the use of the improvement shall be mitigated.~~
  - ~~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.~~
2. New or expanded drainage systems. (Routine maintenance of existing drainage systems may be allowed but only in compliance with the Washington State hydraulic code (WAC 220-660) and the Best Management Practices found in the “Drainage Management Guide for Whatcom County Drainage Improvement Districts.”)
3. The conversion of land to agricultural use.

**Staff Response:** Staff does not recommend this change. By definition, all of these items would expand agricultural uses into areas where previously not done, and therefore not considered ongoing agriculture. Amending the language as proposed would explicitly say that a farm plan—again, intended to apply only to areas already impacted—could be done. Farm plans *cannot* apply to activities that *cause additional harm* to critical areas.



## ISSUE 154. (Brenner)

### 16.16.840 Conservation Farm Plan Requirements.

- A. **Type 1 (Standard) Conservation Farm Plans.** Owners of Type 1 low impact livestock operations have limited options to control animal waste because their operations are small. The required conservation farm 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:
1. System Siting and Design. Barns, corrals, paddocks, or lots are to be sited to avoid runoff directly into critical areas.
    - a. Where structures exist in critical areas or buffers and cannot be relocated, corrective measures must be taken if necessary to avoid runoff of pollutants and bacteria to critical areas.

**Staff Response:** Staff is neutral.

## ISSUE 131. (Donovan)

### 16.16.840 Conservation Farm Plan Requirements

*Need clarification for why deletions in A.1.b.*

**Staff Response:** In subsection A.1.b and A.1.b.i, words were just moved around for grammatical clarity. In subsection A.1.b.ii, the TAC recommended that all streams lacking vegetation be planted to the standard found in that subsection to address temperature impairment. However, the CAC recommended not adopting this, as the cost of installing hedgerows might keep people from participating in the CPAL program. The P/C agreed with the CAC and deleted the proposed TAC addition.

## ISSUE 155. (Brenner)

### 16.16.840 Conservation Farm Plan Requirements.

- A. **Type 1 (Standard) Conservation Farm Plans.** Owners of Type 1 low impact livestock operations have limited options to control animal waste because their operations are small. The required conservation farm 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:
1. System Siting and Design. Barns, corrals, paddocks, or lots are to be sited to avoid runoff directly into critical areas.
    - b. ~~Where trees and shrubs exist~~ <sup>2</sup> Along regulated ~~a~~ streams, lakes, ponds, or wetlands:
      - i. ~~Where trees and shrubs already exist,~~ they shall be retained and managed to preserve the existing functions of the buffer pursuant to the NRCS Conservation Practice 391, "Riparian Forest Buffer."

**Staff Response:** Staff does not recommend either the removal of the footnote, and the deletion of "retained." Though the footnote contains no regulation, it was added as a reminder to the reader to review the definitions of "stream" and "ditch," since there's always been confusion. Removing the word "retained" in reference to existing trees and shrubs goes against the BMP recommended by the NRCS.

<sup>2</sup> Note that ditched channels may or may not meet the definition of a stream. See Article 9, Definitions.

## ISSUE 133. (Weimer)

### 16.16.840 Conservation Farm Plan Requirements

*Subsection (A)(4): How is this section on Exercise or Barn Lots protective of CARAs?*

**Staff Response:** According to George Boggs, Exercise/Barn Lots are typically found on small operations (hobby/few animals). They are confined in wet season and then turned out to pasture. Solids would be picked up and moved to covered storage. Because surface runoff would be directed to a vegetative area the dissolved nutrients (N and P) would be used by the vegetation that is required to be established. NOTE: Nitrates are not shed in urine or feces. Mineralization is temperature dependent. If soil is cold there is little/no conversion. When the soil warms, mineralization occurs but the grass is growing to take up the nutrients.

## ISSUE 156. (Brenner)

### 16.16.840 Conservation Farm Plan Requirements.

- A. **Type 1 (Standard) Conservation Farm Plans.** Owners of Type 1 low-impact livestock operations have limited options to control animal waste because their operations are small. The required conservation farm 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:
- Existing native vegetation within critical areas and their buffers shall be retained to the extent practicable ~~to the extent practicable~~.

**Staff Response:** Staff does not recommend this change. The phrase was stricken because the definition of ongoing ag says that no new area will be cleared per 16.16.290.B.1. Reintroducing it would allow some clearing of existing vegetation.

## ISSUE 132. (Weimer)

### 16.16.840 Conservation Farm Plan Requirements

- A. **Type 1 (Standard) Conservation Farm Plans.** Owners of Type 1 operations have limited options to control animal waste because their operations are small. The required conservation farm plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to assess risk to protect water quality, and the following additional components:
- Fertilizers.** The rate and timing of fertilizer application shall not exceed crop requirements, or cause surface or groundwater quality degradation.

**Staff Response:** This seems like a better way to do what CM Weimer's trying to do in Issue 118, though we might want to say "Fertilizers other than manure," since manure is already addressed in (2).

That said, Natural Resources staff says that though a farm plan might address fertilizer application rates, tracking actual application is not feasible given we only have one staff member who does this, and he's not in the field all the time. PDS believes helping farmers manage this would best be done through the Whatcom Conservation District's education & outreach program. Also, the Washington Department of Agricultural has programmed public outreach activities in 2017-2018 to the berry-growing community in Whatcom County specifically addressing BMPs for application of fertilizers, including manure.

## ISSUE 134. (Weimer)

### 16.16.840 Conservation Farm Plan Requirements

*Subsection (B)(2): This section says that “benchmark conditions are to be captured and described in the plan.” How is this done for CARAs?*

**Staff Response:** Benchmark groundwater conditions are not currently assessed through farm plans. One approach to address this would be to coordinate the activities of the Washington State Departments of Ecology and Health and the Whatcom County Health Department, all of whom already test and/or monitor wells in some manner.

## ISSUE 157. (Brenner)

### 16.16.840 Conservation Farm Plan Requirements.

B. **Type 2 (Custom) Conservation Farm Plans.** In addition to the elements of a Type 1 conservation farm plan, Type 2 plans must address the following:

3. Treatment of Wetlands. Except for impacts allowed by this Title, ~~W~~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>).

**Staff Response:** Staff does not recommend this change. Title 180 is already more lenient than the CAO.

## ISSUE 135. (Weimer)

### 16.16.840 Conservation Farm Plan Requirements

*Subsection (B)(5): This section says that “Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to prevent same.” Where in the chapter is a “risk assessment” required, and how is that defined?*

**Staff Response:** The risk assessment is part of the farm plan application/workbook one uses to apply for farm plan approval. By definition one cannot develop a farm plan (regardless of the type 1, 2, or 3) without an inventory and risk assessment. Attached is a checklist (jointly developed by PDS, the Department of Ecology, and the Whatcom County Health Department) on grazing & manure management for developing that component of the plan. For the purposes of CPAL, CARA’s, streams, riparian, and wetlands are the resource concern. Potential impacts are: Nutrients, Pathogens, Sediment, Plant Damage and Bank erosion. These are addressed through the various practices the selection of which is tailored to the specific farming activities. Pesticides applications are regulated by EPA and WSDA.

## ISSUE 158. (Brenner)

### 16.16.840 Conservation Farm Plan Requirements.

B. **Type 2 (Custom) Conservation Farm Plans.** In addition to the elements of a Type 1 conservation farm plan, Type 2 plans must address the following:

5. Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to ~~mitigate~~ **mitigate and/or** prevent same by:
  - a. A planning advisor; or
  - b. Through the USDA Natural Resources Conservation Service; or
  - c. The Whatcom conservation district; or

- d. 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 and/or prevent** ~~mitigate~~ any identified risks, and
  - Having the plan approved pursuant to WCC [16.16.290](#).

**Staff Response:** Staff is neutral.

**ISSUE 159. (Brenner)**

**16.16.850 Preparation and Approval of Conservation Farm Plans.**

**Table 1. Who May Prepare Conservation Farm Plans**

| <u>Who May Prepare</u>  | <u>Type 1 Operations</u> | <u>Type 2 and 3 Operations</u> |
|---|--------------------------|--------------------------------|
| <u>The farm operator</u>  | <u>X</u>                 |                                |
| <u>Whatcom County Planning and Development Services</u>                                     | <u>X</u>                 | X                              |
| <u>A Qualified Consultant</u>   | <u>X</u>                 | <b>X</b>                       |
| <u>A Watershed Improvement District (for a farm or ranch that is within its boundaries)</u> | <u>X</u>                 |                                |
| <u>The Whatcom Conservation District</u>  | <u>X</u>                 | <u>X</u>                       |
| <u>A Planning Advisor</u>   | <u>X</u>                 | <u>X</u>                       |

**Staff Response:** Staff does not recommend this change. Currently there are no qualified consultants to prepare even Type 1 Conservation Farm Plans in Whatcom County (though there is one Planning Advisor). Staff added the ability for someone to become qualified, but only for the simpler Type 1 farm plans. In order to be qualified to prepare Type 2 or 3 farm plans, one must go through Federal training, by which one becomes a Planning Advisor.

**ISSUE 136. (Weimer)**

**16.16.860 Monitoring and Compliance**

*Is all the language in here about the timing related to “reasonable notice” and “receiving confirmation and scheduling” a site visit up to the County or is some of this state law?*

**Staff Response:** All the language in this section was developed by Whatcom County. The non-underlined text is in the existing code. Most of the new, underlined text is from PDS Policy PL1-85-003Z.

**ISSUE 137. (Weimer)**

**16.16.860 Monitoring and Compliance**

*What about site visits if there are imminent threats to health or the environment?*

**Staff Response:** The same policy, proposed to be incorporated in the code, would apply as written. 16.16.860(C) allows for enforcement pursuant to WCC 16.16.285.

## ISSUE 138. (Weimer)

### 16.16.860 Monitoring and Compliance

*What occurs if a landowner does not respond to a request for a site visit?*

**Staff Response:** Then the farm plan would be considered noncompliant and it would become an enforcement issue.

From George Boggs: The Whatcom Conservation District is considering moving to a paradigm that requires a written agreement whereby the farm operator agrees to work in good faith. If not, we terminate our assistance. If the matter had been referred to the District for technical assistance, then that agency would be told that the relationship had ended. See attached draft agreement.

## ISSUE 160. (Brenner)

### 16.16.860 Monitoring and Compliance.

*Define "Monitoring"*

**Staff Response:** Staff does not recommend this change. There are too many types of monitoring within the CAO to have just one definition, and frankly, each section where monitoring is mentioned appear to self-define what it is. Staff doesn't think it necessary.

## ISSUE 161. (Brenner)

### 16.16.860 Monitoring and Compliance.

A. 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 Technical Administrator's discretion. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. For a time period of up to every 5 years, self-certification is allowed for Type 1 conservation farm plans, or if thefor any plan that is prepared by the Whatcom Conservation District or Planning Advisor 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.

**Staff Response:** Staff does not recommend this change. Changing the language to "any plan prepared by the WCD or PA" would allow all Type 2 and 3 farm plans to be self-certified. Allowing self-certification of Type 1 farm plans was intended to assist the small farm operators. However, allowing larger operations to self-certify would go against the standard practices of the WCD, the Department of Ecology, and other regulatory agencies. The language was incorporated from PDS Policy PL1-85-003Z.

## ISSUE 162. (Brenner)

Define "imminent threat."

### 16.16.860 Monitoring and Compliance.

- B. 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. 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 promptly resolved, the planning advisor shall promptly withdraw from representing the farm operator, notify the Technical Administrator of such, and may report such situations to the Technical Administrator for subsequent action and enforcement in accordance with WCC 16.16.285.

**Staff Response:** Staff does not recommend this change. We feel that there are too many types of potential imminent threats and too many agencies potentially involved (health, agriculture, ecology, etc.) to classify. We feel it would be better for the various departments' directors to have the discretion to determine what constitutes an "imminent threat."

## ISSUE 139. (Donovan)

### 16.16.860 Monitoring and Compliance

*Subsection (C): Why delete "If the conservation farm plan is found not to be protective of critical areas in the approved farm plan..." and where is the original language that concluded after this deletion?*

**Staff Response:** The condition of finding a farm plan to not be protective of critical areas, and the original language that concluded after this deletion became subsection (D) because (C) had addressed two different concepts.

## ISSUE 140. (Donovan)

### 16.16.860 Monitoring and Compliance

*Subsection (C): What are the consequences of a plan being found to be not protective of critical areas? (Is this covered in PL1-85-003Z, point 7?)*

**Staff Response:** The consequences of a plan being found to be not protective of critical areas are found in subsection (D), into which PL1-85-003Z was incorporated, which requires that a new farm plan be developed to address the changed conditions.

## ISSUE 141. (Donovan)

### 16.16.860 Monitoring and Compliance

*Subsection (D): Does "ineffective" mean plan is null and void, and then what?*

**Staff Response:** Any one of the 6 conditions listed under subsection (D), including it becoming ineffective due to substantial changes in agricultural activities, is cause for a new plan to be developed.

## ISSUE 142. (Donovan)

### 16.16.860 Monitoring and Compliance

*Related to monitoring and compliance, PL1-85-003Z May 6, 2010 states: "a self-certification is allowed." Does this present problems similar to the OSS self-certification program?*

**Staff Response:** Self-certification of monitoring and compliance efforts under the CPAL program differs from the OSS self-certification program. Under CPAL, implementation/installation of BMPs is first verified by staff through a site visit; photos showing that the measures are still present are allowed in subsequent years. On the fifth year, staff performs another site visit.

## ISSUE 163. (Brenner)

### 16.16.860 Monitoring and Compliance.

- D. Agricultural operations shall cease to be in compliance with this Article, and a new or revised conservation farm plan will be required, section when the technical administrator determines **with detailed written findings** that any of the following has occurred:
3. When substantial changes in the agricultural activities of the farm or livestock operation have occurred that render the current conservation farm plan ineffective. Substantial changes that render a conservation farm plan ineffective are those that:
    - a. Degrade baseline critical area conditions for riparian and wetland areas that existed when the plan was approved; or,
    - b. Result either in an increased a direct discharge or substantial potential discharge of pollution to surface or ground water; or,
    - c. The type of agricultural practices change from Type 1 to Type 2, Type 2 to Type 3, or Type 1 to Type 3 operations.

**Staff Response:** Staff does not recommend adding "with detailed written findings" as Council has declined this suggestion in other areas. Staff also doesn't recommend adding "an increased" as direct discharges of pollution are never "grandfathered;" each discharge is a separate and illegal activity under the federal Clean Water Act.

## ISSUE 164. (Brenner)

### 16.16.860 Monitoring and Compliance.

- E. With one exception, Whatcom County will not use conservation farm plans (standard or custom) as an admission by the landowner that s/he ~~or she~~ has violated this Chapter. Disclosure of current farm practices, structures on conservation farm plan documents, or observations made through monitoring inspections or conservation farm plan approval, will not be used to bring other enforcement actions against a farm operator. ~~W~~ The exception is that when matters of major life, health, environment, or safety issues, as determined **with detailed written findings** by the Technical Administrator are observed and the landowner fails to immediately and permanently remediate, then the observations may be used in an enforcement action.

**Staff Response:** Staff does not recommend adding "with detailed written findings" as Council has declined this suggestion in other areas.

## ISSUE 143. (Weimer)

### 16.16.870 Limited Public Disclosure

*Is it our decision regarding disclosure of farm plans or is that state law. If it is state law please describe exactly what the state protects from disclosure.*

**Staff Response:** Under state law (see below) PDS considers very little to be disclosable, as most Conservation Farm Plans are prepared by the Whatcom Conservation District, and all dairies, CAFOs, and AFOs need to apply for a Clean Water permit. The only farm plans we believe are disclosable are those used for the application or issuance of a building permit, which we estimate to be about 10% of all the farm plans we have in the county.

Attached to this memo is PDS Policy PL1-85-002Z, which implements RCW 42.56.270.

The state laws regarding the nondisclosure of farm plans follow:

#### **RCW Chapter 42.56 PUBLIC RECORDS ACT**

##### **RCW 42.56.270. Financial, commercial, and proprietary information.**

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(17)(a) Farm plans developed by conservation districts, 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;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

##### **RCW 42.56.610. Certain information from dairies and feedlots limited—Rules.**

The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system 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. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

#### **Chapter 90.64 RCW DAIRY NUTRIENT MANAGEMENT**

##### **RCW 90.64.190. Information subject to public records disclosure—Rules.**

This section applies to dairies, AFOs, and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local agencies from livestock producers under chapter 510, Laws of 2005 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 shall be disclosable in response to a request for public records under chapter [42.56](#) RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

**WAC 16-06-210 Exemptions** (to the Public Disclosure rules).



(29) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:

(a) Number of animals: Beef cattle

|  |  |   |  |  |
|--|--|---|--|--|
| <ul style="list-style-type: none"> <li>• 1 to 19</li> <li>• 20 to 159</li> <li>• 160 to 299</li> <li>• 300 to 999</li> <li>• 1,000 to 5,999</li> </ul> |  | <ul style="list-style-type: none"> <li>• 6,000 to 10,999</li> <li>• 11,000 to 15,999</li> <li>• 16,000 to 20,999</li> <li>• 21,000 to 25,999</li> <li>• 26,000 to 31,199</li> </ul> |  | <ul style="list-style-type: none"> <li>• 31,200 to 37,439</li> <li>• 37,440 to 44,999</li> <li>• 45,000 and above</li> </ul> |
|--|--|---|--|--|

(b) Number of animals: Mature dairy cattle

|  |  |  |  |   |
|--|--|--|--|---|
| <ul style="list-style-type: none"> <li>• 1 to 37</li> <li>• 38 to 199</li> <li>• 200 to 699</li> <li>• 700 to 1,699</li> </ul> |  | <ul style="list-style-type: none"> <li>• 1,700 to 2,699</li> <li>• 2,700 to 3,699</li> <li>• 3,700 to 4,699</li> <li>• 4,700 to 5,699</li> </ul> |  | <ul style="list-style-type: none"> <li>• 5,700 to 6,839</li> <li>• 6,840 and above</li> </ul> |
|--|--|--|--|---|

(c) Number of animals: Dairy heifers

|  |  |  |  |   |
|--|--|--|--|---|
| <ul style="list-style-type: none"> <li>• 1 to 49</li> <li>• 50 to 149</li> <li>• 150 to 299</li> </ul> |  | <ul style="list-style-type: none"> <li>• 300 to 999</li> <li>• 1,000 to 1,999</li> <li>• 2,000 to 2,999</li> </ul> |  | <ul style="list-style-type: none"> <li>• 3,000 to 3,999</li> <li>• 4,000 and above</li> </ul> |
|--|--|--|--|---|

(d) Number of animals: Swine (fifty-five pounds or greater)

|  |  |  |  |   |
|--|--|--|--|---|
| <ul style="list-style-type: none"> <li>• 1 to 19</li> <li>• 20 to 159</li> <li>• 160 to 399</li> </ul> |  | <ul style="list-style-type: none"> <li>• 400 to 749</li> <li>• 750 to 2,499</li> <li>• 2,500 to 4,249</li> </ul> |  | <ul style="list-style-type: none"> <li>• 4,250 to 5,999</li> <li>• 6,000 to 7,749</li> <li>• 7,750 and above</li> </ul> |
|--|--|--|--|---|

(e) Number of animals: Swine (less than fifty-five pounds)

|   |  |  |  |  |
|---|--|--|--|--|
| <ul style="list-style-type: none"> <li>• 1 to 99</li> <li>• 100 to 499</li> <li>• 500 to 1,099</li> <li>• 1,100 to 1,999</li> </ul> |  | <ul style="list-style-type: none"> <li>• 2,000 to 2,999</li> <li>• 3,000 to 9,999</li> <li>• 10,000 to 16,999</li> <li>• 17,000 to 23,999</li> </ul> |  | <ul style="list-style-type: none"> <li>• 24,000 to 30,999</li> <li>• 31,000 and above</li> </ul> |
|---|--|--|--|--|

(f) Number of animals: Layers (all ages)

|  |  |  |  |   |
|--|--|--|--|---|
| <ul style="list-style-type: none"> <li>• 1 to 199</li> <li>• 200 to 999</li> <li>• 1,000 to 10,999</li> <li>• 11,000 to 24,999</li> <li>• 25,000 to 81,999</li> <li>• 82,000 to 138,999</li> <li>• 139,000 to 195,999</li> </ul> |  | <ul style="list-style-type: none"> <li>• 196,000 to 252,999</li> <li>• 253,000 to 309,999</li> <li>• 310,000 to 371,999</li> <li>• 372,000 to 446,399</li> <li>• 446,400 to 535,679</li> <li>• 535,680 to 642,815</li> <li>• 642,816 to 771,379</li> </ul> |  | <ul style="list-style-type: none"> <li>• 771,380 to 925,655</li> <li>• 925,656 to 1,110,787</li> <li>• 1,110,788 to 1,332,945</li> <li>• 1,332,946 and above</li> </ul> |
|--|--|--|--|---|

(g) Number of animals: Broilers (all ages)

|  |  |   |  |   |
|--|--|---|--|---|
| <ul style="list-style-type: none"> <li>• 1 to 199</li> <li>• 200 to 999</li> <li>• 1,000 to 17,999</li> <li>• 18,000 to 37,499</li> <li>• 37,500 to 124,999</li> <li>• 125,000 to 212,499</li> </ul> |  | <ul style="list-style-type: none"> <li>• 212,500 to 299,999</li> <li>• 300,000 and above</li> </ul> <p>(h) Number of animals:<br/>Horses</p> <ul style="list-style-type: none"> <li>• 1 to 19</li> <li>• 20 to 79</li> <li>• 80 to 149</li> </ul> |  | <ul style="list-style-type: none"> <li>• 150 to 499</li> <li>• 500 to 849</li> <li>• 850 to 1,199</li> <li>• 1,200 to 1,549</li> <li>• 1,550 and above</li> </ul> |
|--|--|---|--|---|

(i) Livestock nutrients generated or exported by volume (ft3/day)

|  |  |  |  |  |
|--|--|--|--|--|
| <ul style="list-style-type: none"> <li>• 1 to 74</li> <li>• 75 to 134</li> <li>• 135 to 299</li> </ul> |  | <ul style="list-style-type: none"> <li>• 300 to 449</li> <li>• 450 to 749</li> <li>• 750 to 1,499</li> </ul> |  | <ul style="list-style-type: none"> <li>• 1,500 to 2,499</li> <li>• 2,500 to 4,999</li> <li>• 5,000 to 8,499</li> </ul> |
|--|--|--|--|--|

|   |   |  |  |  |   |
|---|---|--|--|--|---|
|   | <ul style="list-style-type: none"> <li>• 8,500 to 11,999</li> </ul>   |  | <ul style="list-style-type: none"> <li>• 12,000 to 15,999</li> </ul>   |  | <ul style="list-style-type: none"> <li>• 16,000 and above</li> </ul>  |
| (j) Livestock nutrients generated or exported by weight (tons/year)                         |   |  |  |  |   |
|   | <ul style="list-style-type: none"> <li>• 1 to 5,256</li> <li>• 5,257 to 10,512</li> <li>• 10,513 to 21,024</li> <li>• 21,025 to 42,048</li> <li>• 42,049 to 84,096</li> </ul> |  | <ul style="list-style-type: none"> <li>• 84,097 to 164,184</li> <li>• 164,185 to 262,734</li> <li>• 262,735 to 394,200</li> <li>• 394,201 to 558,384</li> <li>• 558,385 to 722,634</li> </ul>      |  | <ul style="list-style-type: none"> <li>• 722,635 to 919,734</li> <li>• 919,735 to 1,051,134</li> <li>• 1,051,135 and above</li> </ul>                 |
| (k) Number of acres covered by the plan or used for land application of livestock nutrients |   |  |  |  |   |
|   | <ul style="list-style-type: none"> <li>• 0 to 25</li> <li>• 26 to 65</li> <li>• 66 to 120</li> <li>• 121 to 300</li> <li>• 301 to 550</li> <li>• 551 to 900</li> </ul>        |  | <ul style="list-style-type: none"> <li>• 901 to 1,300</li> <li>• 1,301 to 1,800</li> <li>• 1,801 to 2,500</li> <li>• 2,501 to 3,200</li> <li>• 3,201 to 4,000</li> <li>• 4,001 to 6,000</li> </ul> |  | <ul style="list-style-type: none"> <li>• 6,001 to 9,000</li> <li>• 9,001 to 11,500</li> <li>• 11,501 to 14,000</li> <li>• 14,001 and above</li> </ul> |
| (l) Crop yields - tons/acre   |   |  |  |  |   |
|   | <ul style="list-style-type: none"> <li>• 0 to 1</li> <li>• 1.1 to 2</li> <li>• 2.1 to 3.5</li> <li>• 3.6 to 5</li> <li>• 5.1 to 7</li> </ul>                                  |  | <ul style="list-style-type: none"> <li>• 7.1 to 9</li> <li>• 9.1 to 12</li> <li>• 12.1 to 14.5</li> <li>• 14.6 to 17</li> <li>• 17.1 to 19.5</li> </ul>  |  | <ul style="list-style-type: none"> <li>• 19.6 to 22</li> <li>• 22.1 to 26</li> <li>• 26.1 and above</li> </ul>  |

**ISSUE 144. (Weimer)**

**16.16.870 Limited Public Disclosure**

*Is the “general summary information” mentioned regarding farm plans available on the county’s website? What does it include?*

**Staff Response:** No, PDS has never compiled such information. However, staff has been talking with the Whatcom Conservation District about obtaining general summary information on a watershed level, which could be compiled and posted on our website.

**From George Boggs:** I believe the County has lacked the resources to capture and make this information available. We can work with the County to do this going forward. From the summary info, one could not deduce from exempt information the identity of the operation. It could provide information such as acreage/animal units/types of operations/BMPs recommended/status of the farms without plans/have plans/implemented plans. NOTE: The County can disclose all elements of the plans obtained as a condition for obtaining permits. There are a number of these.

**ISSUE 145. (Weimer)**

**16.16.870 Limited Public Disclosure**

*Subsection (A): Reinsert “will” – Conservation farm plans will not be subject to public disclosure unless required by law;*

**Staff Response:** Good catch.

## ISSUE 146. (Weimer)

### 16.16.870 Limited Public Disclosure

*Amend subsection (B) to read:*

- B. Provided, that the County will collect summary information related to the address and parcel numbers general location of a farming enterprise covered by the farm plan, the nature of the farming activity, ~~and~~ the specific best management practices to be implemented during the conservation farm plan review process, the number of acres included, and the date of the last compliance review. This information, along with a map that shows parcels covered by approved farm plans, will be made easily and publicly available on the county's website. 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 farm plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation farm plan.

**Staff Response:** Staff strongly recommends against this. If we require this, it would probably end peoples' participation in CPAL. We can do a summary of CFPs by watershed in the Whatcom Conservation District.

## Article 9. Definitions

### ISSUE 165. (Brenner)

#### 16.16.900 Definitions.

"Actively farmed" means land that has an documented history of ongoing agricultural use and that is currently used primarily for the production of crops and/or raising or keeping livestock.

**Staff Response:** Staff recommends deleting this entire definition, as we find now that the term isn't used anywhere in the CAO.

### ISSUE 166. (Brenner)

#### 16.16.900 Definitions.

"Agricultural activities" means those activities directly pertaining to the production of crops or livestock including, but not limited to: cultivation; harvest; grazing; animal waste storage and disposal; fertilization; the operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, and canals; and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Neither the construction of new structures nor Activities that bring an a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.

**Staff Response:** Staff does not recommend this change. Where this term is used in the code it is in reference to exempting standard farming practices from some of the rules. However, both constructing new buildings and bringing new areas into agricultural use are supposed to always fall under the standard rules.

## ISSUE 167. (Brenner)

*Change, "Aquifer susceptibility" and "Aquifer vulnerability" to one definition that uses both terms since they are really the same. (p.86, ln 3-8)*

### 16.16.900 Definitions.

"Aquifer susceptibility" means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

"Aquifer vulnerability" is the combined effect of susceptibility to contamination and the presence of potential contaminants.

**Staff Response:** Staff does not recommend this change. Though related, these words are not the same. Susceptibility how easily a particular aquifer may be contaminated. Its vulnerability is a measure of both its susceptibility and its likelihood of being contaminated given what types of uses are located above it.

## ISSUE 168. (Brenner)

### 16.16.900 Definitions.

"Cumulative Impact" means effects on the environment that are caused by the combined results of past, current and reasonably foreseeable future activities. Evaluation of such cumulative impacts should consider: (i) current circumstances affecting the critical area and relevant natural processes; (ii) reasonably foreseeable future development that may affect the critical area; and (iii) beneficial effects of any established regulatory programs under other local, state, and federal laws.

**Staff Response:** Staff does not recommend this change. The term "cumulative impact" is used in 6 instances in the code and it would be best to define it. This definition is paraphrased from WAC 173-26-186(8)(d) of the Shoreline Management Act.

## ISSUE 169. (Brenner)

### 16.16.900 Definitions.

"Debris flow," also called "lahar," means a moving mass of rock fragments, soil, and mud, more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.

**Staff Response:** Staff does not recommend this change. Though all lahars are a type of debris flow, not all debris flows are lahars. Some can be non-volcanic in nature.

## ISSUE 147. (Weimer)

### 16.16.900 Definitions.

*Amend the definition of "development" to read:*

"Development" means any activity that requires federal, state, or local approval for the use or modification of land or its resources. These activities include, but are not limited to: subdivision and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development and exemptions; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; ~~and~~ septic approval, and agricultural activities requiring a conservation farm plan.

**Staff Response:** Staff does not recommend defining agriculture as development. Putting one cow on one acre, plowing, or irrigating a crop would then be considered development for which permits, including SEPA review, would be required.

### ISSUE 170. (Brenner)

#### 16.16.900 Definitions.

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, ~~pose unacceptable risks to public health and safety and may~~ are may not be suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

**Staff Response:** Staff does not recommend this change. This definition is straight out of RCW 36.70A.030(9).

### ISSUE 171. (Brenner)

#### 16.16.900 Definitions.

“Ongoing agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

**Staff Response:** Staff does not recommend this change. We realize that several amendments have been proposed that would open up the CPAL program to all farming (both new and existing, or ongoing), but that was never the intent of this program. To do so may make us vulnerable to appeals, since treating new ag as old and allowing new impacts could be construed as violating the GMA.

### ISSUE 172. (Brenner)

*Under "Reasonable Use" Change "2,500 square feet" to "3,000 square feet"*

#### 16.16.900 Definitions.

“Reasonable Use” means a property that is deprived of all reasonable use when the owner can realize no reasonable return on the property or make any productive use of the property. Reasonable return does not mean a reduction in value of the land, or a lack of a profit on the purchase and sale of the property, but rather, where there can be no beneficial use of the property; and which is attributable to the implementation of the Critical Areas Ordinance. ~~means any one of the uses allowed within a given zone that has the least impact on the critical areas found on the subject property. For zones that allow single family residential uses, this typically would mean a house that has a development footprint (including all appurtenances except drainfields) and landscaping of 2,500 square feet or less.~~

**Staff Response:** The section of this definition that refers to the square feet is already proposed for deletion so changing the number wouldn't do any good. And Council has already changed this number to 4,000 in 16.16.270.

**ISSUE 148. (Weimer)**

*During the CAO review both the TAC and CAC raised issues regarding the lack of baseline data to allow the County to know whether our CAO is working to protect critical areas. During the CompPlan review the Council built some of this concern into it, and during the Planning Commission review of the CAO they included a finding of fact where they would not agree that the CAO was GMA compliant because of lack of baseline information:*

The proposed regulations for critical areas are ~~sufficient and appropriate to protect the functions and values of those areas~~ consistent with the Whatcom Comprehensive Plan and Growth Management Act.

*I am assuming that none of us want a similar finding of fact in what the Council ultimately produces. To avoid that, or in at least my case a no vote on the entire CAO, I would request that PDS brings us a plan to address this lack of baseline information. At a minimum the plan should include plans to address obtaining baseline info for wetlands, wildlife, and CARAs, and include an implementation timeline, specifics about what is needed (staffing/consultants/funding), and a proposed funding mechanism/source.*

**Staff Response:** There is no requirement in the GMA to do jurisdiction-wide, long-term monitoring of the CAO’s effectiveness, though the Growth Management Hearings Board in several of their decisions have indicated that doing so would be valuable. That said, staff could only find two jurisdictions (King and Snohomish counties) that have performed such a task. Both were done only once, and both received EPA grants to do so. Nonetheless, over the ensuing months after adoption of the CAO, if Council so desires, staff could develop a monitoring plan proposal (see Table 2, below). (This, along with other issues, was actually raised back in September at your first workshop as a potential follow-up issue that the Wildlife Advisory Committee could oversee.)

Just because the P/C struck the referenced words (above) from the proposed finding doesn’t mean the Council can’t reinsert them if they believe the practices contained within the CAO protect critical areas’ functions and values. Staff believes that it does and we urge you to do so, as it would greatly assist in any future appeals.

**Table 2. Existing & Potential Mitigation Monitoring Programs**

| Tasks  | Subtasks  | Supports C/P Policies                        | Est. Add'l FTEs | Est. Cost (\$)                             |
|--|---|--|-----------------|--|
| Development Permit Mitigation Monitoring Program   | <ul style="list-style-type: none"> <li>Continuation of our current 5-year mitigation monitoring program for individual development projects</li> </ul>  | 10A-2, 10K-15, 10M-4, 10L-17                 | 0.25            |  |
| Development Permit Mitigation Monitoring Program Review (adaptive management, on-going review every 2 years)               | <ul style="list-style-type: none"> <li>Internal assessment of program consistency (Permit issuance + Mitigation)</li> <li>Review WDFW High Resolution Change Detection data</li> </ul>  | 10A-2, 10K-15, 10M-4, 10L-17                 |                 |  |
| Countywide Ecosystem Functions and Values Study (initial study)  | <ul style="list-style-type: none"> <li>Hire a consultant to design the baseline analysis, develop data architecture, develop assessment data forms, and train field crew (WC staff). The baseline analysis is an on-the-ground rapid assessment to ground truth GIS data sets for ecosystem health.</li> <li>Create working relationship with Western University and citizen science community</li> <li>Use a stratified random sampling analysis for site selection in order to maintain statistical integrity. PDS would recommend 7 sites for each unique ecosystem (nearshore/offshore/sand spit, marine riparian, wetland, fresh water stream/ river, fresh water lake, grassland/prairie/AG, upland forest,); for a total of 49 sites. The Wildlife Committee has established 5 habitat categories for their report to Council; the study design would use these categories as one of the stratification levels.</li> <li>Complete Rapid Habitat Assessments for various habitats and wildlife (bird, amphibian, upland vegetation (grassland, forest (secession type), bald), streams, marine riparian, riparian, wetlands, lakes, nearshore</li> <li>GIS Vegetation Change Analysis (WDFW High Resolution Change Detection)</li> <li>Water quality conventional sampling at each site as applicable</li> <li>Wetland Prediction Model (work with Snohomish County and Skagit County)</li> <li>GIS Analysis</li> <li>Laboratory Analysis</li> <li>Citizen Scientist Workshops</li> </ul> | 10A-2, 10K-15, 10K-16, 10M-4, 10L-17, 10L-18 | 0.25            | \$250,000 – \$400,000                      |
| Countywide Baseline Ecosystem Functions and Values Monitoring Program (adaptive management, on-going review every 5-years) | <ul style="list-style-type: none"> <li>Complete Rapid Habitat Assessments</li> <li>Laboratory Analysis</li> <li>Internal assessment of program consistency (Permit issuance + Mitigation)</li> <li>Wetland Prediction Model Maintenance</li> <li>Citizen Scientist Workshops</li> </ul>   | 10A-2, 10K-15, 10K-16, 10M-4, 10L-17, 10L-18 | 0.25            | \$100,000 (data management and consultant) |
| Additional (potential) Programs  | <ul style="list-style-type: none"> <li>If we start a mitigation bank</li> <li>If we start/participate in an in-lieu fee program</li> </ul>  |  | .75             |  |