



Department of Commerce

# Critical Areas Handbook

## *Chapter 5*

### *Protecting Critical Areas in Natural Resource Lands*



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Brian Bonlender, Director



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## Natural Resource Lands and Critical Areas Protection

The Growth Management Act (GMA) requires designation and protection of critical areas on all lands, including those designated as natural resource lands of long-term commercial significance. One of the GMA's goals is to maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Conserving productive forest and agricultural lands is encouraged and allowing incompatible uses is discouraged.<sup>1</sup>

All 39 counties are required to classify and designate natural resource lands of long-term commercial significance and to classify, designate, and protect critical areas.<sup>2</sup> Natural resource lands include agricultural, forest, and mineral lands. The 29 counties that are fully planning under the GMA (i.e., adopting GMA-compliant comprehensive plans and development regulations) are also required to adopt regulations to conserve natural resource lands of long-term commercial significance. The regulations must ensure that the use of lands adjacent to natural resource lands does not interfere with the continued use, in the accustomed manner, and in accordance with best management practices of designated natural resource lands for the production of food, agricultural products, or timber, or for the extraction of minerals.<sup>3</sup>

Mining and forest practices are regulated through local and state permits that address how natural resources are extracted, how environmentally sensitive areas will be protected, and how the land will be restored or reclaimed for future uses (i.e., restoration of a mining site or reforestation). Local governments typically regulate agricultural land uses through zoning, but may or may not regulate the specific agricultural practices. Some agricultural land uses, such as feedlots and dairies, may require a conditional use permit while orchards, vineyards and row crops are typically permitted outright. In any case, local governments have the duty to protect critical areas that may be impacted by agricultural practices.

Restoration and protection of watersheds in natural resource lands provide economic value by preventing downstream water quality degradation and protecting our drinking water. Proper land stewardship protects salmon habitats, which support commercial and recreational fisheries. Additionally, wetlands and properly functioning floodplains provide important functions in the regulation of stormwater and prevention of flood damage.<sup>4</sup>

The Growth Management Act requires local governments to go through a deliberative and well-documented process to achieve a balanced program that provides for critical area protection

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<sup>1</sup> See RCW 36.70A.020(8)

<sup>2</sup> See RCW 36.70A.050

<sup>3</sup> See RCW 36.79A.060

<sup>4</sup> Washington State Department of Natural Resources, [Forest Watershed Ecosystem Services Publication](#), 2012.

and long-term natural resource production. They must consider both the sustainability of the natural resource industry and the functions and values of critical areas to determine the most appropriate elements for their critical areas protection program.

## Agricultural Lands and Critical Areas Protection

Protecting critical areas where they intersect with agricultural lands has been a significant challenge for counties. Consequently, in 2007 the Legislature passed Substitute Senate bill 5248. This bill established a three-year moratorium that precluded counties from adopting amendments to critical areas ordinances with respect to agricultural activities.<sup>5</sup>

The Legislature asked the William D. Ruckleshaus Center, a neutral policy consensus center operated by Washington State University and the University of Washington, to convene the Agriculture and Critical Areas Committee to examine the issue of critical areas protections where agricultural activities occur, and to provide a recommendation on new legislation. Based on a consensus recommendation in 2010 from the Committee, the Legislature passed and the governor signed into law the Voluntary Stewardship Program (VSP) in 2011.

The VSP provides an alternative to counties to protect critical areas where agricultural activities are conducted.<sup>6</sup> Twenty-seven of the state's 39 counties opted into the VSP. The Washington State Conservation Commission is the state agency lead for implementing the VSP. See the Washington State Conservation Commission [VSP web site](#) for detailed program information. This document provides more information on local implementation of the VSP program starting on page 17.

## The Value of Agricultural Lands: Economy and Ecosystem Services

Washington State hosts a tremendous diversity of crops and types of food production. The state is also home to rich soil, diverse climate, and large-scale irrigation, making it one of the most productive growing regions enabling farmers to produce over 300 crops each year. With approximately 36,000 farms, and the top producer in the country of nine specific crops, the agricultural economy is an important state asset. The agricultural production in 2016 alone was

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<sup>5</sup> Chapter 353, Laws of 2007

<sup>6</sup> Chapter 360, Laws of 2011 (primarily codified in RCW 36.70A.700 through .760)

\$10.6 billion. Fisheries and the aquaculture industry are also essential to the state’s healthy economy.<sup>7</sup>

The landscape across the state varies considerably, with diverse ecosystems and climates. Types and condition of critical areas, local species, and habitats that exist throughout agricultural lands should be examined and evaluated for critical areas conservation opportunities. Beneficial to a discussion of critical areas protection is an examination of the types of production and needs of the agricultural industry in any one county. Communities will need to consider the unique landscape characteristics of the area, whether it is shrub-steppe, Columbia River floodplain, tidal estuary, or lowland Western Washington prairies.

Agriculture is a central element of economic development for rural counties and in rural areas of more urban counties. In recognition of the importance of agricultural and other natural resource industries, the GMA requires counties to designate and conserve agricultural lands of long-term commercial significance. It is important to note that agricultural activities occur on designated resource lands of long-term commercial significance, as well as other rural areas. A number of counties have designated both agricultural lands of long-term commercial significance and rural agricultural lands. Both are important to the economy. Even if agricultural land does not meet the criteria for long-term commercial significance, smaller farms can be an important source of income for rural residents.

## The Impacts of Farm Practices on Critical Areas

Many land use activities, including agriculture, have historically impacted critical areas, including filling wetlands, draining wetlands, channelizing streams and converting natural riparian habitat to other uses. The conversion of riparian habitat can lead to pollution of adjacent streams, creeks and natural drainages. Precipitation runoff from large farm buildings can impact the water quality of surface waters. Chemical, fuel and fertilizer spills from farm storage structures, as well as the chemical use associated with agriculture, can pollute ground and surface waters. Streams in agricultural areas may be susceptible to elevated temperatures, given that most agricultural areas are in the lowlands and many streams do not have extensive vegetated buffers.

Improper farm practices may result in:

- Soil erosion and sedimentation that affect habitat and water quality.
- Pesticide and fertilizer pollution that impact fish and wildlife survival, kill non-target insect species, and impact aquatic plants.

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<sup>7</sup> Washington State Department of Agriculture, “[Agriculture: A Cornerstone of Washington’s Economy.](#)” April 25, 2017.

- Animal wastes that degrade water quality, reduce fish production, introduce diseases to water that are harmful to people, and cause excessive aquatic plant and algal growth.<sup>8</sup>

Unmanaged grazing can negatively impact riparian ecosystems and is usually the result of inappropriate livestock management. Grazing can affect all characteristics of riparian and associated aquatic systems, including:

- Vegetative cover
- Soil stability
- Bank and channel structure
- Instream structure
- Water quantity and quality<sup>9</sup>

The U.S. Environmental Protection Agency (EPA) defines Animal Feeding Operations (AFOs) as agricultural enterprises where animals are kept and raised in confined situations.<sup>10</sup> The definition does not include general stock grazing. AFOs have implications for critical aquifer recharge areas and source water. They are considered “point sources” under the federal Clean Water Act and are subject to National Pollutant Discharge Elimination System (NPDES) permits. Agricultural operators meeting certain conditions must apply to participate in Ecology’s Concentrated Feeding Operation (CAFO) General Permit.<sup>11</sup> AFO and CAFOs associated with dairies are subject to the nutrient (organic waste) management requirements in RCW 90.64, as administered by the state Department of Agriculture.

In reviewing a critical areas protection program, counties and cities need to recognize that different types of agriculture have different types of impacts and benefits. For example, drainage agriculture raises very different issues than from livestock or dairy. Irrigated agriculture affects critical areas differently from dry land farming, and the impacts from row crops are different than those of tree fruit. It is important for city and county planners to evaluate the different agricultural practices occurring within their jurisdictions. We encourage local government to use agricultural expertise available to them (WSU extension, local conservation districts, etc.) to better understand potential critical area impacts specific to different agricultural sectors.

One example of an analysis of different types of agricultural use is the Department of Ecology’s *Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System and Eastern Washington Wetland Rating System*<sup>12</sup>. The

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<sup>8</sup> See [Washington Department of Fish and Wildlife, \*Priority Habitat and Species, Management Recommendations for Washington's Priority Habitats: Riparian\* \(1997\), pp. 56-58.](#)

<sup>9</sup> See [Washington Department of Fish and Wildlife, \*Priority Habitat and Species, Management Recommendations for Washington's Priority Habitats: Riparian\* \(1997\), pp. 60-61.](#)

<sup>10</sup> <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsanimals/livestock/afo/>

<sup>11</sup> <https://agr.wa.gov/foodanimal/livestock-nutrient/npdescafopermit.aspx>

<sup>12</sup> <https://fortress.wa.gov/ecy/publications/parts/0506008part1.pdf>

guidance separates different types of agriculture into different land-use intensity buckets in Table 8C-3 (Western Washington) and 8D-3 (Eastern Washington), page 5.

## Regulatory Programs

Cities and counties are required to adopt development regulations to assure the protection of existing critical areas functions and values. Counties with watersheds participating in the VSP are not required to use development regulations to protect critical areas where agricultural activities take place, but the VSP work plan must incorporate any existing regulations relied upon to achieve goals and benchmarks.<sup>13</sup>

In 2017, the Washington State Department of Commerce produced a report that analyzes critical areas regulations in the 12 non-VSP counties. The report includes a summary of common approaches and key themes for critical area protection; and highlights regulations, incentives, and tools these 12 counties use to protect critical areas on agricultural lands. The report provides a basis for many of the recommendations in this chapter regarding critical areas protection in agricultural lands.<sup>14</sup>

Local governments should consult with the [Department of Natural Resources, Aquatic Resources Division](#) to obtain information about the presence, if applicable, of aquatic lands adjacent to natural resource lands.

## Court and Growth Management Hearings Board Decisions

All local governments should consult recent court and growth management hearings board decisions when developing and reviewing critical areas ordinances. The courts have ruled that broadly exempting agricultural activities does not protect critical areas.

The Washington State Court of Appeals Division II held that an exception from critical areas regulations for agricultural activities must be supported by evidence in the record that such an exception is necessary and that the best available science was employed in crafting the exception.<sup>15</sup>

The Division II Court of Appeals reviewed the legislative history of RCW 36.70A.060, the broad definition of “development regulations” in RCW 36.70A.030, the breadth of the best available

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<https://fortress.wa.gov/ecy/publications/parts/0506008part2.pdf>

<sup>13</sup> RCW 36.70A.720(1).

<sup>14</sup> See [Critical Areas and Agriculture: Review of Development Regulations](#), Washington State Department of Commerce, 2017.

<sup>15</sup> *Whidbey Environmental Action Network v. Island County*, 122 Wn. App. 156, 93 P.3d 885 (June 7, 2004), review denied, 153 Wn.2d 1025 (2005).

science requirement in RCW 36.70A.172(1), and the natural resources goal in RCW 36.70A.020(8). Based on that review, the court concluded the Legislature intended that counties regulate critical areas, including existing uses, to advance the GMA's goals. The court held a county could expand its agricultural land exemption to include agricultural uses outside designated agricultural lands of long-term commercial significance, but it must balance the exemption with restrictions based on best available science that address any threatened harm resulting from the expanded exemption. The court concluded that preexisting agricultural uses are not exempt from all critical areas regulation. The court also held that the county was not limited to exempting only designated agricultural resource land from full critical areas regulation and that the county may expand its exempt agricultural land to meet its local conditions. However, the county must balance such expanded exemption with corresponding restrictions that take into account the specific harms threatened by the expanded class of farm lands.<sup>16</sup>

In the *Swinomish*<sup>17</sup> decision, the state Supreme Court recognized the competing goals in the GMA of protection of critical areas and natural resource lands stating that local governments are not given much direction as to whether protecting critical areas or maintaining agricultural lands is a priority. The court noted that RCW 36.70A.172(1) requires local governments to include best available science in developing regulations and policies to protect critical areas and that they are to "give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries." However, the court recognized that there was still deference given to balancing of local circumstances and, in this case, the court did not require the county to curtail historic agricultural activities in critical areas and upheld the county's "no harm" provision in its ordinance. The Court concluded that the "no harm" standard protected critical areas by maintaining existing conditions. The Court upheld the county's decision against requiring mandatory riparian buffers in agricultural lands because doing so would impose a requirement to restore habitat functions that no longer existed.

For recent Growth Management Hearings Board decisions, see Appendix 1.A - *Critical Areas Case Law*, Appendix 5.A - *Critical Areas and Agriculture: Review of Development Regulations*, and the [Growth Management Hearings Board](#) web site.

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<sup>16</sup> *Clallam County v. Western Washington Growth Management Hearings Board*, 130 Wn. App. 127, 121 P.3d 764 (Oct. 25, 2005), review denied, 163 Wn.2d 1053 (2008).

<sup>17</sup> *Swinomish Indian Tribal Community. v. Western Washington Growth Management Hearings Board*, 161 Wn.2d 415 (2007).

## How to address Existing, Ongoing and New Agriculture in Development Regulations

Counties and cities should specify the length of time agriculture can lie dormant before it is no longer considered existing and ongoing in their critical areas regulations. Existing and ongoing agriculture is often defined as agricultural activity that has been conducted or maintained within the past five years.

In 2014, Island County was challenged by the Whidbey Environmental Action Network (WEAN) for failing to protect fish and wildlife habitat conservation areas as required by RCW 36.70A.060. The county critical areas ordinance stated that existing and ongoing agriculture ceased to be ongoing if the land was idle for more than five years, unless an extension was

Klickitat County defines existing agricultural or ranching activities as those that have been active in 2 of the last 5 years.

granted, or the property was enrolled in a federal conservation program. The ordinance allowed for an extension to the five-year period by a reasonable amount of time if unavoidable events would make active agricultural use impossible, such as a death or difficulty selling the property. In 2015, the Growth Management Hearings Board issued a final decision and order that determined the county had failed to establish clear standards for extending critical area exemptions to agricultural practices because their definition included a vague and potentially unlimited extension standard.<sup>18</sup> Island County then amended its definition to state that existing and ongoing agriculture is exempt if it lies idle for three years. The option for a time extension was removed from the definition. In 2016, the Hearings Board found this update to be in compliance with the requirements of the GMA.

Local government regulations typically recognize agricultural land enrolled in a federally recognized conservation program, such as the Conservation Reserve Program (CRP), as meeting the definition of existing and ongoing agriculture. Existing and ongoing agricultural activity exemptions and allowances for maintenance or repair may not continue or transfer when a new use is established, and the existing and ongoing agricultural activity is discontinued. New uses would be subject to the critical area regulations.

In addition to defining the length of time an agricultural activity must be in use, further definitions of ongoing and existing agriculture commonly include:

- Current use in areas designated as agricultural lands of long-term significance.
- Activities involved in the production of crops or livestock, operation and maintenance of existing farm and stock ponds or drainage and irrigation ditches.

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<sup>18</sup> *WEAN v. Island County, Case No. 14-2-0009*, FDO, June 24, 2015.

- Changes between agricultural activities, such as crop rotation, are considered ongoing and existing activities.
- Activities that bring an area into agricultural use are not part of an ongoing activity.
- An operation ceases to be ongoing when the area where it was conducted has been converted to a nonagricultural use. In a few instances, a county offers an extension for the ongoing or existing use designation.

When defining the time period in which an agricultural activity remains existing and ongoing, counties and cities are advised to also define what constitutes new agricultural activities. Often, new and expanded agricultural activities are subject to additional regulatory requirements, making it important to define and distinguish between new and existing agricultural operations. Jefferson County defines “new” agriculture as agricultural activities proposed or conducted after 2003 that do not meet their definition of “existing and ongoing” agriculture.

Several county development codes regulate new or expanding agriculture per the conditions of their critical areas ordinance or their livestock ordinance. King County, for example, provides that new agriculture or the expansion of agriculture is allowed in a specific set of critical areas if the use meets the development standards for each of the critical areas. Clallam County requires new and expanded agricultural activities to comply with both the substantive and procedural provisions of their ordinance.

## Agricultural Activities: Descriptions and Definitions

Definitions for agricultural activities may vary among jurisdictions based on the unique characteristics of the geography and ecology in their area. A diversity of landscapes offers opportunities for different types of agricultural uses. With this in mind, local governments must find the best definition for their area. Defining agricultural activities makes it clear which activities are subject to the regulation. A common reference is found in RCW 90.58.065(2)(a) in the Shoreline Management Act. This is the definition included the VSP statute (RCW 36.70A.703)(1) and in the GMA statutory definitions in WAC 365-196-200.

Once agricultural activities are defined, the development regulations can describe how the activities are regulated. For example, in the review of the 12 county critical areas development regulations, the following agricultural related uses and activities are regulated:

- Nonconforming (preexisting) uses and structures
- Maintenance, repair, reconstruction and remodeling
- Agricultural chemicals
- Fencing and signage

## Impact Ratings for Agricultural Activities

Impact or intensity ratings can be used to categorize potential impacts of agricultural activities in critical areas. A rating system assists in categorizing agricultural activities into low, moderate or high impacts. The impact level can then be used to determine allowed uses, and necessary regulations and protection standards to assure the protection of critical areas.

Several counties permit low-impact agricultural uses in critical areas, but require monitoring and adaptive management through a standard farm conservation plan. Moderate-to-high impact farm or livestock operations are also subject to monitoring and adaptive management, but it is conducted through a custom farm conservation plan. Farm plans are used to lower the risk of the agricultural activity.

Clallam County uses high-to-low risk assessment criteria to evaluate existing and ongoing agriculture within and adjacent to aquatic habitat conservation areas and wetlands.<sup>19</sup> The ratings are based on risk assessment scores from six performance standards and four environmental categories (river and streams, wetlands, ponds, irrigation/drainage ditches, livestock and heavy use areas, and manure storage). Depending on the rating, either high, moderate or low-risk, various protection standards are required. Agricultural activities are compliant if they score moderate-to-low-risk in the assessment. If the agricultural use is found to be causing harm or receives a high-risk rating in one of the six performance standards, then the agricultural operator is required to develop a farm conservation plan. The purpose of the plan is to reduce the risk assessment from high to moderate.

In Whatcom County, ongoing low-impact agricultural uses are permitted, but also subject to monitoring and adaptive management through a required standard farm conservation plan. Ongoing moderate-to-high-impact farm or livestock operations follow the same guidelines, but must implement a custom farm conservation plan. King County also uses farm plans to bring agricultural activities with moderate-to-high-impacts into compliance with low-to-moderate impact standards.

## Non-regulatory and Incentive Programs

In pursuing environmental protection, comprehensive plan policies should identify non-regulatory programs to protect critical areas, in addition to regulatory approaches.<sup>20</sup> Non-regulatory programs include but are not limited to:

- Providing incentives to protect critical areas;

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<sup>19</sup> Appendix 5.B: Clallam County Risk Assessment Criteria

<sup>20</sup> WAC 365-196-485(1)(f).

- Public education regarding the value of critical areas;
- Public recognition of good stewards of the land;
- Purchase or transfer of development rights from environmentally sensitive areas; or
- Paying landowners for providing ecosystem services such as water quality protection.

Programs that provide incentives to implement best management practices in agricultural lands provide a good approach to protect critical areas given the challenges of regulating farm practices and the need to maintain and enhance the agricultural industry. For jurisdictions seeking to balance the economic needs of the agricultural industry with critical areas protection, non-regulatory, incentive-based approaches that the local government can easily monitor are a promising means to achieve critical areas protection.

Voluntary and incentive-based measures are usually implemented with support and partnership with local conservation districts, federal agencies, and regional non-profit organizations. Landowners can be supported with assistance from a local jurisdiction to encourage participation in private, state and federally funded resource enhancement projects or programs.

Cooperative and non-regulatory, incentive-based programs that promote best management practices can provide some or all of the protection needed to protect the functions and values of critical areas in agricultural lands. This is premised on the assurance that they are comprehensive, achieve the outcomes for protecting critical areas over time, and are implemented with a high degree of certainty. To ensure certainty, implementation of voluntary programs should be monitored for effectiveness, tracked with an adequately funded adaptive management program, and backed by development regulations that adequately protect critical areas if protection is not being achieved after a reasonable period of time.

## **Best Management Practices**

Best management practices (BMPs) have been developed to control water and soil erosion both on the farm and off. Leaving vegetation along streams, contour plowing (plowing across the slope), and terracing decrease the speed of runoff and allow for more water to soak into the soil. More recently, many farmers have adopted “conservation tillage” and “no till” farming methods.

Jurisdictions may look to the National Resources Conservation Service, Field Office Technical Guide (NRCS FOTG) for practical guidance on the most effective conservation practice standards and specification for their area. Agricultural experts, including the Washington State Conservation Commission, WSDA, WSU and others, generally regard FOTGs as a well-researched and science based toolkit. FOTGs provide landowners and technical assistance providers with management techniques and practices that can be used to protect natural

resources and maintain agricultural viability. However, NRCS conservation practice standards are not designed, nor provide the specificity to meet state water quality standards. The Department of Ecology requires additional analysis and specificity to ensure BMPs will result in water quality protection that complies with state law and water quality standards. Working with local conservation districts and Ecology to ensure BMPs are tailored to the unique needs of your area is advised.

The Department of Ecology is developing best management practices for agricultural landowners (see [Voluntary Clean Water Guidance for Agriculture](#)). Completing the guidance is an important part of Ecology's [Water Quality Management Plan to Control Nonpoint Sources of Pollution](#), which addresses pollution coming from a wide variety of sources such as city streets, forest lands and farms.

## Federal Incentive Programs

A number of federal programs provide incentives for landowners to implement best management practices:

- Conservation Reserve Enhancement Program (CREP) – CREP is a joint partnership between the state of Washington and U.S. Department of Agriculture that is administered by the Washington State Conservation Commission and the USDA Farm Services Agency (FSA) to restore riparian habitat. Under the voluntary program, land enrolled in CREP is removed from production and grazing under 10- or 15-year contracts. In return for planting trees and shrubs to stabilize the stream bank and to provide a number of additional ecological functions, landowners receive payments to cover annual rent, incentive and maintenance payments, and cost share for practice installations. Payments can result in no cost to the landowner for participation.
- Conservation Reserve Program (CRP) – CRP provides technical and financial help to eligible farmers and ranchers to address soil, water, and related natural resource concerns on their lands in an environmentally beneficial and cost-effective manner. Funding from the Commodity Credit Corporation (CCC) helps farmers and ranchers to comply with federal, state, and tribal environmental laws, and encourages environmental enhancement.
- Environmental Quality Incentives Program (EQIP) – EQIP provides technical and financial help to eligible farmers and ranchers to address soil, water, and related natural resource concerns on their lands in an environmentally beneficial manner. Contracts of up to 10 years are made with eligible producers to implement one or more eligible conservation practices, such as animal waste management facilities, terraces, filter strips, tree planting, and permanent wildlife habitat. Incentive payments can be made to implement one or more land management practices.
- Section 319 nonpoint grants – Provide grants for water quality BMPs that address nonpoint source pollution projects. Eligible nonpoint projects include: livestock fencing, off-stream water development, stream crossings, riparian plantings and subsidization of on-site sewage repair and replacement local loan programs. Limited funding is available for education and outreach.

- Habitat conservation plans (HCPs) under the federal Endangered Species Act – HCPs are planning documents required as part of an application for an “incidental take permit.” The plan describes the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated and how the HCP is to be funded. HCPs can apply to both listed and non-listed species, including those that are candidates or have been proposed for listing. The HCP describes potential impacts to known threatened and endangered species by specified activities, which can include agriculture. The incidental take permit allows the permit-holder to legally proceed with an activity that would otherwise result in the unlawful take of a listed species.<sup>21</sup> HCPs can be developed at the county level, so that any BMPs or mitigation required of landowners can be streamlined through a countywide process, local regulations, and permitting processes, and so corrective actions and mitigation processes can be developed on a countywide basis.

Local governments that include federal programs in their critical areas protection programs need to understand how federal programs fit with local protection goals and requirements, as farmers are very familiar with them. Local governments should work closely with federal agencies and local conservation districts to understand these programs. For example, NRCS can explain how the field office technical guides are used as a basis for best management practices.

Local governments also need to be aware of issues that can come up if they choose to rely on federal programs for critical areas protection. For example, local regulatory requirements may affect a farmer’s eligibility for a federal program because the federal programs are intentionally voluntary. If local regulations mandate buffers, a farmer may not be eligible for CREP. The federal and state agencies, as well as local conservation districts, understand the nuances of these programs and can help a county or city work through these issues.

## State Incentive Programs

Farmers and local governments can access a variety of state conservation programs. They include the Salmon Recovery Fund, the Interagency Committee on Outdoor Recreation’s Washington Wildlife and Recreation Program, and the Washington State Department of Natural Resources’ Aquatic Land Enhancement Grants.

Finally, counties and cities have a variety of local, non-regulatory tools available to help with develop a critical areas program for agricultural lands. They include:

- *Comprehensive plan policies* – policies in the plan requiring use of incentive programs to encourage water quality and habitat protection.
- *Land acquisition or purchase of conservation easements* – county and city programs for acquisition funded by conservation futures or other local funding sources and federal and state

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<sup>21</sup> [U.S. Fish & Wildlife Services Habitat Conservation Plans | Overview](#)

funding noted above. Conservation Futures is an open space acquisition program authorized by state law, funded by a tax levy on real estate.

- *Long-term lease* – land trust/governmental agency leases property from the landowner, thereby preventing other uses of the property during the lease term.
- *Habitat restoration projects* – projects to create fish passage at culverts, restore estuaries, etc. with conservation futures or other local funding sources and federal and state funding noted above.
- *Mitigation banking* – the restoration, creation or enhancement of wetlands for the purpose of compensating for unavoidable impacts to wetlands at another location.
- *Purchase of development rights* – the local government purchases rights to develop allowed under current zoning from the landowner with conservation futures or other local, state, or federal funding sources.
- *Transfer of development rights* – the local government sets up a program whereby development rights may be transferred from agricultural land to an area where higher densities are encouraged.
- *Open space taxation* – The Open Space Taxation Act, enacted in 1970, allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than their highest and best use. The act allows for property tax abatement for land designated as open space land in local comprehensive plans and zoned accordingly or otherwise meeting certain criteria. To receive property tax relief, a landowner must apply for and receive the open space classification and abide by the restrictions placed on the land in the open space classification. The owner is obliged to leave property in the program for 10 years, or face penalties upon withdrawal. Some counties, such as King, Island and Chelan, have made it easier for property owners to enter the system by adopting a public benefit rating system. If the county legislative authority has established a public benefit rating system for the open space classification, the criteria contained within the rating system govern both the eligibility of the lands described in each application filed for that classification and the current use valuation of that land.

## Farm Management Plans

Common voluntary approaches to agricultural land stewardship and environmental protection are individual stewardship plans, farm management plans, or habitat protection plans. These plans not only lay out best management practices for critical area protection, they also can be used to leverage and qualify for funding from federal and state sources to support implementation efforts. Farm plans are often associated with uses in fish and wildlife conservation areas, wetlands and aquifer recharge areas to protect and enhance water quality. They also help improve the efficiency of farm operations. A farm plan may still be required in addition to a permit per the requirement of the development code. If a landowner's agricultural operation is found to be adversely impacting a critical area without appropriate mitigation, a farm plan may be required as a form of enforcement.

Several counties have developed manuals to describe best management practices and offer seminars and presentations to interested land owners. Local governments may offer technical assistance to facilitate the critical area protection. Non-monetary incentives such as farm management or habitat protection plans offered to property owners encourage the implementation of projects that provide increased protections and enhancements to critical areas.

Farm management plans typically address:

- Farm size
- Soil types
- Slope of the land
- Waste and manure piles
- Location of streams and water bodies
- Surface water, water flow controls, water treatment and management
- Type of crops or livestock
- Machinery and farm buildings

Farm management plans are intended to help agricultural operators maintain productive and economically viable agricultural land, while protecting and enhancing critical areas and water quality using best available science and effective mitigation measures. Farm management or conservation plans are not limited to large commercial operations; farms of all sizes can benefit from a farm plan. Plans can effectively reduce impacts from farm activities on natural resources with solutions unique to each farm to avoid or minimize adverse impacts with mitigation techniques.

Common farm plans include:

- **Goals:** Restore or enhance critical areas and hydrologic systems.
- **Inventory Maps:** Critical areas, designated habitat areas, existing and proposed structures, cleared and forested areas, utilities, roads, driveways, wetlands and property lines.
- **Planning Map, Scope and Timeline:** Map and proposed new agricultural activities, the scope of the agricultural activities, a timeline for their implementation, use of pesticides, fertilizers or other chemicals, and identification of existing habitat functions and values.
- **Implementation Plan:** Description and implementation plan for performance standards, integrated pest management, mitigation measures and best management practices to be implemented for the maintenance, restoration and enhancement of critical areas and their buffers.
- **Future Plan:** Changes to the site, including structures, land use conversion, and changes to the landscape.

- **Monitoring:** Ensure the effectiveness of proposed strategies to protect critical areas. If monitoring shows the farm plan does not effectively protect critical areas a new farm plan may be required. Whatcom County farm plans are also subject to adaptive management.
- **Approval Process:** Typically conducted by an NRCS, WDFW or conservation district certified agricultural technician, a qualified planning advisor or the county technical administrator. Approval is based on compliance with the BMPs of the NRCS field guide.
- **Compliance:** Once approved, the farm plan is considered in compliance with the county’s critical areas provisions. Compliance is typically sought through education and voluntary measures, but an inspection may be required to confirm compliance. Refusal or inability to implement the farm plan effectively may result in the farm plan being revoked, requiring the property owner to be subject to provisions in the standard critical areas regulation. County planning advisors may provide suggestions to support compliance, but responsibility for compliance is typically with the farm operator. If compliance is not resolved, enforcement actions per the critical areas ordinance may be applied.
- **Technical Assistance and Resources:** These are provided to the property owner through the county, the conservation district, the watershed improvement district or the Washington State University agricultural extension office. This can include workshops, web-based information and manuals.
- **Conservation Practice Standards:** The most recent version of the [USDA NRCS Field Office Technical Guide \(FOTG\)](#) is often referenced for conservation practices and specifications within the plan.
- **Site Inspections:** Evaluation, monitoring, compliance and enforcement of farm plan effectiveness are conducted by the county through scheduled site inspections and farm operator self-assessment.

Farm plans are an optional and recommended strategy to protect critical areas, particularly for existing and ongoing agricultural activities. In the case of new agriculture, counties may choose to require a farm plan before new or expanded agricultural activities may take place. Farm plans may be required for agricultural activities that receive high-impact ratings or high-risk assessment scores. With low-impact ratings or scores, farm plans can remain optional.

Snohomish County allows agricultural operators to submit farm conservation plans as one option to show compliance with critical area regulations.

In Snohomish County, agricultural operators can submit a farm conservation plan to the county for approval as one option to show compliance with county critical area regulations. The farm conservation plan must include provisions to protect critical areas specific to the farm site recommended by the NRCS or the Snohomish Conservation District.<sup>22</sup>

To increase and promote the use of farm plans, jurisdictions can provide ready-made farm plan templates for agricultural activities that are more common or typical. These plans can be modified and tailored based on the unique goals and activities of each farm operation. Local

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<sup>22</sup> See [Snohomish County Code, Section 30.62A.620](#)

conservation districts are important partners and can play an essential role in providing technical assistance in the development of farm plans and farm plan templates.

When developing farm plans, local governments are advised to address how confidential and proprietary information will be handled within their critical areas ordinance. In most instances, farm plans are not open to the public unless required by law or court. Financial, commercial, and proprietary information in farm plans are typically exempt from disclosure unless the landowner gives permission. Snohomish County's code states that confidential or proprietary information in farm conservation plans submittal for their approval can be redacted prior to public disclosure. Public disclosure of farm plans for agricultural operations including dairies and animal feeding operations, and concentrated animal feeding operations is addressed in RCW 42.56.270(17), RCW 42.56.610, and RCW 90.64.190.

Note that any information used to review or demonstrate compliance with National Flood Insurance Program (NFIP) standards must be included in the local jurisdiction's NFIP permanent file. If an element of a farm plan is used to demonstrate NFIP compliance, it should be understood that any such elements of the farm plan cannot remain confidential.

To see examples of farm plans, additional details about common farm plan elements, and a sample farm plan factsheet, see Appendix 5.B item "Critical Areas and Agriculture: Review of Development Regulations, Chapter 6: Farm Conservation Plans."

## Voluntary Stewardship Program

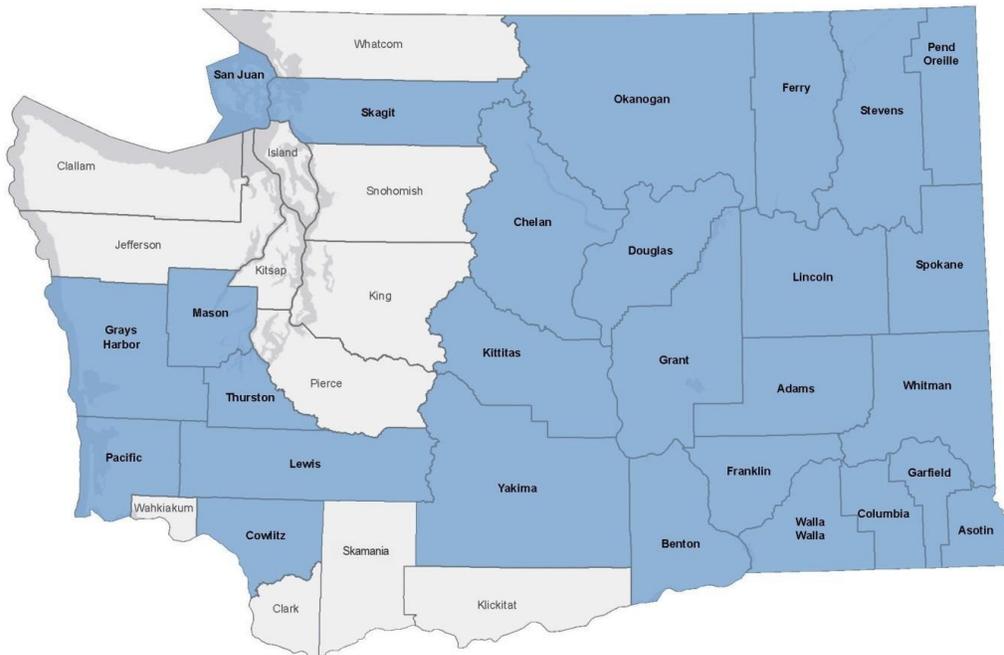
In 2011, the Voluntary Stewardship Program (VSP) was adopted into the GMA as an alternative approach for counties to protect critical areas where agricultural activities are conducted. Counties had until January 2012 (six months after July 22, 2011) to opt into the VSP by ordinance or resolution, with 27 counties choosing to opt-in (Figure 1). Each participating county must identify the watersheds that will participate in the program.<sup>23</sup>

Non-VSP counties must continue regulating agricultural activities in their critical areas ordinances. The program provides counties with a voluntary approach to protect and enhance critical areas on lands used for agricultural activities. The program relies on the voluntary actions of agricultural operators to collaboratively protect and enhance critical areas where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture. The VSP builds on existing state and federal programs, which allows counties to leverage resources from previous work plans to successfully reach program goals.

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<sup>23</sup> RCW 36.70A.710.

Figure 1. Washington State Conservation Commission Voluntary Stewardship County Participation Map



\*Shaded counties are participating in the Voluntary Stewardship Program

The Legislature has allocated over \$15 million to the program since inception. The Washington State Conservation Commission administers the program with guidance from a statewide advisory committee and technical panel. The Conservation Commission allocates funds and supports counties in developing incentive-based strategies and local guidelines for watershed stewardship. The program relies on continued funding from the Legislature.

Visit the [Conservation Commission Voluntary Stewardship Program website](#) to find more information about the VSP.

## Watershed Work Groups and Watershed Work Plans

In 2015, counties began developing VSP work plans to protect critical areas and maintain agricultural viability. Pursuant to RCW 36.70A.720, the purpose of a watershed work plan is to protect critical areas while maintaining the viability of agriculture in the watershed. Counties designate watershed groups to develop the work plan, which must include goals and benchmarks to protect and enhance critical areas.

Watershed work groups, composed of farmers, tribes, local environmental groups and agricultural industry representatives, must develop watershed work plans with goals and measurable benchmarks to determine the progress and success of the program over time.

Some workgroups also have participation from county and state agency representatives. The VSP applies to all areas where agricultural activities are conducted in designated watersheds and not just designated agricultural resource lands of long-term commercial significance. All agricultural operators participating in the VSP are eligible to receive funding and assistance under watershed programs.<sup>24</sup>

Once completed, watershed work plans are submitted to the Conservation Commission director, who then forwards to the technical panel for review. The technical panel, consisting of representatives from the Washington State Departments of Agriculture, Fish and Wildlife, Ecology and the Conservation Commission, reviews and evaluates the work plans. The technical panel assesses whether the work plan will meet VSP requirements to protect critical areas while maintaining and enhancing the viability of agriculture in the watershed. If the technical panel determines that the work plan meets these requirements, they will recommend approval to the Conservation Commission director. If the technical panel determines that the work plan does not meet the VSP requirements, the work plan may not be approved, or may be modified and resubmitted.<sup>25</sup>

A Statewide Advisory Committee advises the Conservation Commission and Technical Panel on VSP policies and operations.

State natural resource agencies support the work plan by developing materials to assist the local watershed groups with this process. State agency monitoring efforts related to the implementation of the program focus on the goals and benchmarks of the work plan. Within five years of receiving funding for a participating watershed, the watershed group must report to the director and the county on whether the work plan's goals and benchmarks were met.

A report to the Conservation Commission director is also required no later than 10 years after receipt of funding, and every five years thereafter, to determine whether the goals and benchmarks are being met. After the approval of a work plan, counties and watersheds may request that state and federal agencies focus existing enforcement authority in participating watersheds if it will support achieving the work plan goals and benchmarks.

Prior to the approval of a work plan by the Conservation Commission director, agricultural activities located in participating watersheds are subject to the county's existing development regulations that protect critical areas. After watershed work plan approval, protection of the functions and values of critical areas from agricultural located in participating watersheds is provided by the watershed work plan.

After a county's watershed work plan is approved, counties are encouraged to reference and describe their participation in the VSP within their critical areas development regulations.

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<sup>24</sup> RCW 36.70A.720

<sup>25</sup> RCW 36.70A.725

Counties should be very clear in describing critical areas regulations that still apply to agricultural activities after work plan approval. County VSP work plans may rely on existing development regulations to achieve the goals and benchmarks for critical areas protection.<sup>26</sup> For example, work plans may defer to existing regulations for steep slopes, erodible soils or flood hazards. In shoreline areas, agricultural activities are still subject to local Shoreline Master Programs.

## Agricultural Activities

The VSP legislation uses the Shoreline Management Act (SMA) definition for “agricultural activities.”<sup>27</sup> Therefore, once approved by the Conservation Commission, the watershed work plan governs all agricultural activities, as defined.

Agricultural production, facilities and operations not consistent with the agricultural activities definition will be subject to the county’s critical area regulations. For example, the definition for agricultural activities states that agricultural facilities may be maintained, repaired or replaced, as long as the facility is not located closer to the shoreline than the original facility. The agricultural activities definition does not include brand new agricultural facilities. Therefore, new agricultural facilities, such as barns, ditches and access corridors, must comply with county critical area regulations, including setbacks and buffer standards.

The Shoreline Management Act definition for “agricultural activities” describes existing and ongoing agricultural operations and facilities. It does not include “new” agriculture. Therefore, counties must evaluate “new” agricultural production, facilities and operations to ensure compliance with critical area regulations.

The SMA definition for agricultural activities includes “maintaining agricultural lands under production or cultivation,” but does not include new or expanded agricultural uses or practices. Therefore, bringing new land into cultivation must be evaluated under the county’s critical areas regulations.

Due to the varied style and content of VSP counties’ critical areas ordinances, it is difficult to provide a one-size-fits-all solution for how to revise the development regulations to reflect the recommendations of the watershed work plan. As a best practice, counties are encouraged to consult with legal staff for advice on how best to address it for each individual county.<sup>28</sup> It must be clear to agricultural operators which development regulations still apply.

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<sup>26</sup> RCW 36.70A.720(1)(h)

<sup>27</sup> RCW 90.58.065(2)(a)

<sup>28</sup> WAC 365-196-832

## Monitoring and Adaptive Management

RCW 36.70A.720 requires that watershed work plans establish baseline monitoring for the participation and implementation of VSP projects, stewardship activities, and the effects on critical areas and agriculture as they relate to the benchmarks developed for each watershed. This underscores the importance of selecting appropriate benchmarks and collecting accurate baseline monitoring data. Counties are required to evaluate adaptive management approaches within 60 days after the end of each biennium.

Within five years of receiving funding to implement the program, a report to the Conservation Commission is required to show if benchmarks and goals have been met. If goals are not met, implementation of the work plan continues and the watershed group must identify additional voluntary actions and funding necessary to meet the benchmarks.

Actions must be implemented upon receipt of funding. A report to the Conservation Commission director is required within 10 years of when funding was received, and every five years thereafter, to report if the goals and benchmarks in the watershed work plan were met.<sup>29</sup>

For more on adaptive management and monitoring related to both VSP and non-VSP counties, please see Chapter 7 of the Critical Areas Assistance Handbook. Note that the type of monitoring recommended in Chapter 7 is not the type required by the VSP.

## County Responsibilities When Exiting or Withdrawing from the Voluntary Stewardship Program

Counties that elect to protect critical areas through the VSP may withdraw participating watersheds from the program by adopting an ordinance or resolution. Counties may withdraw watersheds from the program at the end of three, five or eight years after receipt of funding, or any time after 10 years of funding.

Within 18 months after withdrawing a participating watershed from the program, a county must review and, if necessary, revise its development regulations that protect critical areas in that watershed as they specifically apply to agricultural activities.<sup>30</sup> During the 18-month interim period, counties are required to continue protecting critical areas in watersheds withdrawn from the VSP. The adopted ordinance or resolution used to withdraw the participating watersheds must describe how the county will continue to protect critical areas in watersheds withdrawn from the VSP. Counties have three options:<sup>31</sup>

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<sup>29</sup> RCW 36.70A.720

<sup>30</sup> RCW 36.70A.710(7)(b)

<sup>31</sup> WAC 365-196-832(4).

- 1) Adopt interim development regulations;
- 2) Revert to development regulations that were in place at the time of watershed work plan approval; or
- 3) Continue to implement the watershed work plan.

## County Responsibilities When Work Plans Not Approved, Fail or are Not Funded

When watershed work plans are not approved by the Conservation Commission, fail, or are not funded, counties are required, within 18 months, to adopt one of four options:<sup>32</sup>

- 1) Develop, adopt and implement a watershed work plan.
- 2) Adopt development regulations previously adopted by another local government to protect critical areas used for agricultural activities.
- 3) Adopt development regulations certified by the department (Commerce) as protective of critical areas in areas used for agricultural activities as required by this chapter.
- 4) Review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they relate to agricultural activities.

During the 18-month interim period, counties must continue to protect critical areas in areas used for agricultural activities using one of the four options. One of the options, as stated in RCW 36.70A.735 (1)(b), was clarified in a Washington State Department of Commerce rule update in WAC 365-196-832(5)(b)<sup>33</sup> to provide implementation guidance:

“Counties may adopt another county's critical area development regulations, provided such regulations are from a region with similar agricultural activities, geography, and geology, and are from Clallam, Clark, King, or Whatcom counties at the time the voluntary stewardship program legislation was enacted, and have not been invalidated, or are from any county (including Clallam, Clark, King, or Whatcom) and have been upheld as adequately protective of critical areas functions and values in areas used for agricultural activities by the growth management hearings board or court after July 1, 2011.”

Counties considering Clallam County's ordinance for adoption of VSP development regulations pursuant to RCW 36.70A.735 (1)(b) need to be aware that Clallam County's critical areas ordinance was under appeal in 2011 at the time the VSP legislation was signed into law. The Court of Appeals subsequently held that Clallam County's ordinance was required to be compliant with the GMA only for those counties participating in the VSP. Because Clallam County was not participating in the VSP, the county would have to comply with the “traditional” requirements of RCW 36.70A.060 rather than the alternative requirements for VSP

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<sup>32</sup> RCW 36.70A.735(1)

<sup>33</sup> Effective November 4, 2017.

participants.<sup>34</sup> On remand from the court, the Growth Management Hearings Board found the county's ordinance out of compliance. Since that time, Clallam County revised its development regulations as they pertain to the protection of critical areas where agricultural activities take place. With respect to RCW 36.70A.735, counties are advised to adopt development regulations that have been upheld by the courts as adequate for the protection of critical areas functions and values in areas used for agricultural activities.<sup>35</sup>

## Agricultural Viability

Watershed work plans must protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.<sup>36</sup> The VSP statute does not define or provide guidance for counties to measure agricultural viability. Therefore, each county must develop criteria tailored to their unique agricultural characteristics to measure or describe agricultural viability. The state Conservation Commission provides guidance for counties on this issue in its *Agricultural Viability Toolkit*, which provides the following considerations for agricultural viability:

- Productively farm on a given piece of land or in a specific area,
- Maintain an economically viable farm business,
- Keep the land in agriculture long-term, and
- Steward the land so it will remain productive in the future.<sup>37</sup>

Agriculture needs adequate land and water resources. Other land uses, such as housing and industrial developments, compete for land and water, threatening agricultural viability. Farms and ranches need sufficient infrastructure and market access systems to maintain viability. Other considerations include technical support for modern conservation practices and education, research and succession planning.

## Periodic Review and Update Requirements

All counties and cities must comply with the periodic review and update requirements as they apply to critical areas regulations in agricultural lands as required by RCW 36.70A.130. The statute provides an exception for counties with watersheds participating in the VSP. Counties are not required to develop or update critical areas regulations applicable to agricultural activities in those participating watersheds if they are meeting established benchmarks and goals for critical areas protection under their watershed plan.<sup>38</sup> However, those counties must

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<sup>34</sup> *Protect the Peninsula's Future v. Growth Management Hearings Board*, 185 Wn. App. 959 (2015).

<sup>35</sup> WAC 365-196-832(5)(b)

<sup>36</sup> RCW 36.70A.725

<sup>37</sup> [Agriculture Viability Toolkit, Washington State Conservation Commission, 2016](#)

<sup>38</sup> RCW 36.70A.130(8)

still comply with the periodic update schedule and guidelines regarding the critical areas ordinance as it applies to all other activities and in non-VSP watersheds.

## State and Federal Regulations Impacting Agricultural Lands and Critical Areas

Regardless of participation or non-participation in the VSP, jurisdictions are required to comply with state and federal regulations, such as the federal Clean Water Act and the state Water Pollution Control Act. Producers participating in the VSP still must comply with water quality standards, including wetlands protection, and comply with state and federal environmental regulations.

Statutes and regulations that regulate agricultural activities includes, but are not limited to:

- Hydraulic project approval
- Livestock management ordinance
- Washington State Dairy Nutrient Management Act
- Washington Shoreline Management Act
- Water Pollution Control Act
- Water quality standards for surface water
- Water quality standards for groundwater
- Endangered Species Act
- Federal Clean Water Act
- Federal Emergency Management Agency Laws
- National Flood Insurance Program

## Agriculture and Shoreline Master Programs

The Shoreline Management Act (SMA) was enacted in 1971 and amended in 2002 to clarify that Shoreline Master Programs (SMPs) cannot modify or limit agricultural activities on land where agricultural activities are conducted. If there are conflicts between critical areas regulations and SMP policies, the SMP provisions will prevail. New agricultural activities must comply with SMP requirements when land is being converted from another use to agriculture. New development that does not meet the definition of “agricultural activity” per RCW 90.58.065 must also comply with SMP standards.

After the Department of Ecology (Ecology) approves a comprehensively updated SMP, critical areas within shorelines of the state are protected by SMPs and are not subject to procedural or substantive requirements of the GMA. However, counties may rely on critical areas ordinances

within shoreline jurisdiction provided they meet Ecology standards. [Ecology's Shoreline Master Program Handbook](#) describes options for local governments to incorporate relevant portions of critical areas ordinances into SMPs directly, or adopting critical area regulations by reference.

Counties participating in the VSP are still subject to the SMA and local SMP requirements.

## Agriculture and Drinking Water

Agricultural land uses can negatively impact drinking water in numerous ways. In terms of critical areas, the explicit drinking water relationship is between agricultural uses/practices and critical aquifer recharge areas; but another relationship exists in terms of proximity to public water systems and the associated times of travel to the water source. In these circumstances, a jurisdiction should limit or condition specific land uses *and practices* that are likely to foul drinking water.

Pesticides and other agricultural chemicals can appear in surface and ground waters proximate to agricultural lands through surface runoff and/or groundwater infiltration. The state departments of ecology and agriculture jointly published best management practices for storing and using agricultural chemicals.<sup>39</sup>

Manure-producing agricultural uses can likewise contribute to nitrate pollution if manure is not managed properly. Ecology published guidance for assessing the risks to water quality associated with livestock operations in 2015, which is helpfully organized in terms of riparian areas, confinement areas, manure storage areas, and upland pasture areas.<sup>40</sup>

In 2013, the Washington Nitrate Prioritization Project identified a consolidated approach for state agencies to address agricultural pollution of surface and ground water.<sup>41</sup> In part, the project identified hydrogeological information necessary to understand how groundwater's presence and movement affects nitrate contamination and formed a basis for information-sharing among regulatory agencies. Additional technical information was published separately in 2016.<sup>42</sup> Also in 2016, Ecology published a literature review that examined scientific information on manure management associated with CAFOs, strategized measures of these practices' effectiveness, and identified practices and treatment technologies to maintain and protect groundwater.<sup>43</sup>

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<sup>39</sup> <https://fortress.wa.gov/ecy/publications/documents/94189.pdf>

<sup>40</sup> <https://fortress.wa.gov/ecy/publications/documents/1510020.pdf>

<sup>41</sup> <https://fortress.wa.gov/ecy/publications/documents/1410005.pdf>

<sup>42</sup> <https://fortress.wa.gov/ecy/publications/documents/1610011.pdf>

<sup>43</sup> <https://fortress.wa.gov/ecy/publications/documents/1603026.pdf>

Agricultural uses, specifically farms and dairies, are categorized as “severe and high health cross-contamination hazard premises requiring premises isolation by [air gap] or [reduced pressure backflow assembly].”<sup>44</sup> What this means in practice is that technical requirements must be met to prevent backflow from user connections that could contaminate public water systems. Water purveyors are responsible for cross-connection control between their systems and individual service connections or meters.

While drinking water purveyors must comply with all local plans,<sup>45</sup> they must, at the same time, “exercise surveillance over conditions and activities in the watershed affecting source water quality”<sup>46</sup> as a part of their water system plans, which are to include a discussion of “the foreseeable effect from current and future use on the water quantity and quality of any body of water from which its water is diverted or withdrawn.”<sup>47</sup>

Water system plans must incorporate several aspects of source water protection: (1) an immediate sanitary control area (minimum 100-foot radius for wells and 200-foot radius for springs); (2) a wellhead protection program, typically comprised of six-month and one-, five-, and ten-year times of travel to the source; and (3) a watershed control program for surface sources or groundwater under the direct influence of surface water, including “an inventory of all potential surface water contamination sources and activities, including site locations and other/operators, located within the watershed and having the significant potential to contaminate the source water quality.”<sup>48</sup> In addition, it must evaluate “conditions/activities in the watershed that are adversely affecting source water quality” and reevaluate changes that have occurred since the last evaluation that *could* adversely affect quality.<sup>49</sup>

Purveyors must ask local governments to review water system plans and assess consistency with local planning efforts, generally on a 60-day turnaround.<sup>50</sup> However, there is no complementary clause requiring that local governments actually provide them with a review or comments, so it’s possible that sometimes the ends don’t meet. Similar to the best practices identified for overall critical aquifer recharge area planning, it’s to the jurisdiction’s advantage to engage with local water purveyors when considering agricultural uses within the community and how their operations relate to drinking water protection.

Some parts of the state are designated as “critical water supply service areas” in which there are not just individual water system plans but a coordinated water system plan that may cover numerous jurisdictions and/or water systems. Critical water supply service area boundaries are

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<sup>44</sup> WAC 246-290-490, Table 9

<sup>45</sup> WAC 246-290-108

<sup>46</sup> WAC 246-290-668

<sup>47</sup> WAC 246-290-100(4)(f)(ii)(B)

<sup>48</sup> WAC 246-290-135

<sup>49</sup> WAC 246-290-668

<sup>50</sup> WAC 246-290-108

set by the county legislative authority and also have a relationship with local plans and zoning.  
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<sup>51</sup> See, generally, Ch. 70.116 RCW and Ch. 246-293 WAC

## Forest Lands and Critical Areas Protection

Forest practices, including timber harvest and its associated activities (e.g., road building, pre-commercial thinning, controlled burning, herbicide and insecticide spraying), temporarily or permanently alter the character of forested landscapes, including critical areas. For example, vegetation removal, road construction, and soil disturbance are the chief mechanisms by which forest practices influence riparian areas. These disturbances can result in:

- Hydrologic (relating to water flow) effects
- Soil destabilization, erosion, and sedimentation
- Stream temperature increases and a more severe microclimate
- Loss of large woody debris
- Habitat degradation and fragmentation
- Loss of habitat diversity
- Introduction of invasive species
- Fish and wildlife impacts
- Cumulative effects

The Washington State Forest Practices Board adopts the Forest Practices Rules in Title 222 WAC, establishing minimum standards for forest practice activities on non-federal forest land under Chapter 76.09 RCW, the Forest Practices Act. As defined in the act, “forest practice” means:

- [A]ny activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, or removing forest biomass, including but not limited to:
- Activities in and over typed water;
- Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance;
- Harvesting, final and intermediate;
- Pre-commercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

Forest practice activities do not include preparatory work such as tree marking, land surveying, road flagging and removal of incidental vegetation such as berries, ferns, or mushrooms. These

activities and the removal of incidental vegetation do not result in damage to forest soils or public resources.<sup>52</sup>

“Forest land” is defined in the Forest Practices Rules as “all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.”<sup>53</sup> Thus, “forest land” for purposes of the Forest Practices Act includes all land meeting this definition regardless of whether it has been designated natural resource land of long-term commercial significance under RCW 36.70A.170. However, forest practices are subject to local critical area regulations instead of the Forest Practices Rules when forest land is converted to non-forestry use, or when a conversion is likely.

## Administration of the Forest Practices Rules

The Washington State Department of Natural Resources (WDNR) administers the Forest Practices Rules, except when jurisdiction has been transferred to local government. Forest practices include activities related to growing, harvesting, or processing timber, including, but not limited to, road construction and maintenance, thinning, salvage, harvest, reforestation, brush control, and the application of fertilizers or pesticides. There are four classes of forest practices:<sup>54</sup>

- Class IV-Special - Certain activities determined to have potential for a substantial impact on the environment that require review under the state Environmental Policy Act (SEPA).
- Class IV-General - Activities that are not listed as Class IV-Special that are subject to SEPA review and that are being converted to another use.
- Class I – Determined to have no direct potential for damaging a public resource.
- Class II – Determined to have a less than ordinary potential to damage a public resource (water, fish and wildlife).
- Class III – All other forest practices not classified as I, II or IV. Class III forest practices within the urban growth area where the transfer of jurisdiction to a local government has occurred to a local government are regulated by WDNR if it is on contiguous forest land equal to or greater than 20 acres and the landowner provides documentation as noted under the Class IV-General above regarding intention not to convert or obtains an approved conversion harvest plan.

## When to Apply the Critical Areas Ordinance and the Shoreline Master Program

Class IV-General forest practices will be subject to local critical area regulations when a conversion activity is planned or conversion to another land use is likely. Conversion is

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<sup>52</sup> WAC 222-16-010

<sup>53</sup> WAC 222-16-010

<sup>54</sup> RCW 76.09.050 and WAC 222-16-050

considered to be likely when forest practices involve timber harvest or road construction within a designated urban growth area. Exceptions are provided to this where:

- The forest landowner provides a written statement of intent not to convert for 10 years, with either a written forest management plan approved by WDNR or the land is enrolled under Chapter 84.33 or 84.34 RCW; or
- A Conversion Option Harvest Plan has been approved by the local government and submitted to WDNR.

Except as stated above under Class III forest practices, the CAO would also apply to forest activity requiring a forest practices application when located within an urban growth area.

The SMA applies to forest practices activities administered by WDNR when harvesting or road construction is planned within shorelines of the state, as defined by the SMA. Forest practices that constitute a substantial development within the “shoreline” may require a Shoreline Substantial Development Permit. Applicants are required to contact the county having jurisdiction before submitting a Forest Practices Application to ensure compliance with the requirements of the local shoreline master program.

## Transfer of Jurisdiction to Local Government

Counties with a population greater than 100,000, and the cities and towns within them, are required to adopt ordinances or regulations to assume jurisdiction over certain forestry activities under the Forest Practices Act.<sup>55</sup> Local governments assume jurisdiction over forestry activities within the urban growth area and conversion activities outside the urban growth area. The local government initiates the transfer process; WDNR provides technical assistance during the process and reviews the local government’s regulations for meeting the statute. Local critical areas and development regulations must be in compliance with RCW 36.70A.130 and, if applicable RCW 36.70A.215. In addition, they must at a minimum include:

- Provisions requiring appropriate approvals for all phases of the conversion of forest lands, including land clearing and grading; and
- Procedures for the collection and administration of permit and recording fees.<sup>56</sup>

As of June 2018, WDNR has approved the following counties and cities for a transfer of jurisdiction:

- Counties: Thurston, King, Spokane, Clark, Mason, Pierce, and Snohomish.
- Cities: Port Townsend, Bonney Lake, Monroe, University Place, Federal Way, Lacey, Mill Creek, Everett, Olympia, Tumwater, Arlington, Mount Vernon, and Bothell.

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<sup>55</sup> RCW 76.09.240

<sup>56</sup> RCS 76.09.240((2))

## Conversion to a Non-Forest Use

A landowner who has not stated an intent to convert and decides to convert within six years of receiving an approved Forest Practices application or notification, must:

- Stop all forest practices activities on the parcel subject to the proposed land use conversion;
- Contact Ecology and the applicable local government to begin the permit process; and
- Notify WDNR, withdraw any applicable applications or notifications, and submit a new application for conversion.<sup>57</sup>

Upon being contacted by a landowner, the local government must:

- Notify WDNR and request the status of forest practices applications, notifications, or final orders or decisions; and
- Require full compliance with SEPA and outstanding final order or decisions from WDNR; and
- Make a determination of full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan must be required and approved by the local government.<sup>58</sup>

For more information and technical assistance regarding the Forest Practices Rules as they relate to critical areas regulations under the GMA, contact the [WDNR Forest Practices Division staff](#).

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<sup>57</sup> RCW 76.09.470(1)

<sup>58</sup> RCW 76.09470(2)

## Mineral Resource Lands and Critical Areas Protection

Aggregate and hard rock mining can impact critical areas in various ways, including ground water harvest, ground water pollution, surface water pollution, slope stability, ground surface subsidence, and noise, light, and vibration. The processing of minerals into asphalt or other aggregate products may also have similar impacts. Conditions such as regulating the time of mining operation and other permit conditions can be required on mineral resource permits to ensure that habitat and water quantity and quality issues are addressed and avoided. The issuance of a water rights permit may be required if it is determined that aquifers will be impacted by mining activity.

As with other natural resource lands, local governments are required to designate mineral lands of long-term commercial significance. They are also responsible for approval of mine sites and/or the subsequent use of the mine site. Mining operations will be regulated by the local jurisdiction's critical areas relations.

WDNR regulates certain aspects of the mineral industry, including surface mining and reclamation as specified in the Surface Mine Reclamation Program (SMRP), created in 1971.<sup>59</sup> The SMRP makes sure that all lands and waters within the state are protected. WDNR also regulates metal mining and milling operations.<sup>60</sup> Critical areas that may overlay designated mineral resource lands include critical aquifer recharge areas, frequently flooded areas, geologically unstable areas, and fish and wildlife habitat conservation areas.

When considering the designation of mineral lands as well as creating development standards and administering local permits, it is important to check for proximity to drinking water sources to avoid conflicts with not just aquifer recharge but also to avoid impact to the aquifer such as breach, sedimentation or other degradation of water quality. The Washington State Department of Health maintains a statewide map of public water systems and their associated wellhead protection areas.<sup>61</sup>

Local designation of both resource lands and critical areas should have considered ranking designated mineral resource lands on the basis of several factors to assign priority levels to these designated lands. Criteria to consider in assigning priorities could have included their ease of access for transportation, surrounding land uses and the compatibility of mining with those uses, the quantity and quality of the resource, demand for the resource, and environmental impacts of mining based on local circumstances, including the presence of critical areas.

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<sup>59</sup> RCW 78.44, Surface Mining

<sup>60</sup> RCW 78.56, Metals Mining and Milling Operations

<sup>61</sup> <https://fortress.wa.gov/doh/eh/maps/SWAP/index.html>

## Building the Legal Record and Including Best Available Science

Counties, and in some instances cities, may face significant challenges in their efforts to protect critical areas on natural resource lands. For example, there will be instances where local governments must reconcile the need to protect critical areas with the need to conserve farmland and enhance the agricultural industry. Consequently, it will be important for local governments to build a record that documents the inclusion of any new best available science in critical areas protection, as well as consideration of the economic impacts to local natural resource industries. The record should include local information about critical areas generated through inventory, survey, and assessment data. Once this level of information is known, management approaches that look at local circumstances and opportunities necessary to protect critical areas can be developed.

See Chapter 1 of this *Critical Areas Handbook* for more information on Best Available Science.



**Department of Commerce**

# **Critical Areas and Agriculture: Review of Development Regulations**

*December 2016  
Department of Commerce Critical Areas and Agriculture Summary Report  
Growth Management Services*

# Appendix 5.A

## Acknowledgements

### Washington State Department of Commerce

Genevieve Dial, Research Analyst, Growth Management Services

Scott Kuhta, Senior Planner, Growth Management Services

Dave Andersen, Eastern Regional Manager, Growth Management Services

Washington State Department of Commerce

Growth Management Services

1011 Plum St. SE

P.O. Box 42525

Olympia, WA 98504-2525

<http://www.commerce.wa.gov>

For people with disabilities, this report is available on request in other formats. To submit a request, please call 360-725-4000 (TTY 360-586-0772).

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## Executive Summary

The Washington State Legislature adopted the Growth Management Act (GMA) in 1990. The GMA requires local governments to designate natural resource lands and critical areas. Development regulations are required to assure the conservation of agricultural, forest, and mineral resource lands and to protect critical areas ([RCW 36.70A.060](#)). Counties and cities are required to include the best available science ([RCW 36.70A.172\(1\)](#)) when developing their critical areas regulations and must give special consideration to conservation and protection measures to preserve or enhance anadromous fisheries. The GMA defines five critical areas, including: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Counties and cities must develop effective policies and development regulations for the protection of critical areas and conservation of natural resource lands, including agricultural resource lands.

A 2011 amendment to the GMA ([RCW 36.70A.700 – 760](#)) allowed counties to enroll in the Voluntary Stewardship Program (VSP) to implement incentive-based and voluntary measures to protect critical areas where agricultural activities take place. Twenty-seven counties opted into this program; the remaining twelve continue to use development regulations to protect critical areas and conserve agricultural land. An analysis of the development regulations in the twelve non-VSP counties is provided in this report along with a summary of common approaches and key themes. The report highlights regulations, incentives, and tools these twelve jurisdictions use to protect critical areas on agricultural lands. Additionally, this report provides a summary of the case law and legislative history related to the topic of critical areas ordinances (CAO) and agriculture.

Developing CAOs that both protect critical areas and conserve agricultural land is a complex task with many policy considerations. The information in this report summarizes common CAO approaches and the history and legal requirements associated with this task. This report is intended to be used as a reference to understand what non-VSP counties have implemented, what common approaches have been used, and what laws and guidelines should be considered to protect critical areas and preserve agriculture land in their communities. It will also provide background information to support the *Critical Areas Assistance Handbook* update.

## Key Findings

Throughout the review and analysis of non-VSP county CAOs many common themes were identified. Primarily, CAOs regulate development activity that may cause adverse impacts to critical areas. Regulations specific to agricultural activities were more difficult to find, requiring a search throughout most chapters within the CAO.

- CAOs are organized differently throughout the jurisdictions. One approach is to provide a general exemption or regulation in the first chapter of the CAO. The other common method is to list agricultural exemptions and regulations within each critical area chapter.
- Regulations and exemptions for agricultural activities are not addressed uniformly among the five types of critical areas, resulting in more specific regulations in one critical area chapter and no regulations in another.
- Variations in definitions relating to agricultural land, activities and uses are common. This report includes a list of common definitions that can be used as examples to increase consistency and ensure that the important categories and topics are addressed. Most important are definitions for 'ongoing and existing' and 'new' agriculture.
- 'New' agriculture is not always defined and CAOs do not consistently address new and expanded agricultural uses and activities. Requiring farm management plans is a common approach to regulating new and expanded agricultural activities.
- Ongoing and existing agricultural activities and reconstruction and remodeling of structures are typically exempt.

# Chapter 1: Background

## 1.0 Legislative and Case Law History

Since the adoption of the GMA, many jurisdictions have faced legal challenges regarding the consistency of their development regulations with the requirements of the GMA. CAOs have presented many jurisdictions with challenges regarding the use of best available science, best management practices and the protection of fish and wildlife habitat conservation areas.

Developing policies to both protect critical areas and maintain agricultural productivity can be complicated and has resulted in numerous cases before the Growth Management Hearings Board, the Washington Court of Appeals and the Washington State Supreme Court. The outcome of many of these cases shapes how critical areas policies are developed today. With the GMA update cycle occurring every eight years; jurisdictions may benefit from a review of the legislative context as they update their CAOs. This chapter serves to breakdown the complexity of the legal environment related to agriculture and critical areas.

## 1.1 Case Law History

The table below summarizes several legal cases that pertain to agriculture and critical areas regulations, including: best available science, buffers, “enhancement” and “protection”, anadromous fish and agricultural exemptions in Washington.

**Table 1. Cases Relevant to Critical Areas and Agriculture in Washington State: Supreme Court of the State of Washington, Washington Court of Appeals and Washington State Growth Management Hearings Board**

Case Title	Subject Summary	Year
Friends of Skagit County v. Skagit County, 96-2-0025	Where [critical areas] are designated and the Forest Practices Act provides a local government with some authority to act, the GMA requires a local government to protect critical areas and their buffers within the scope of that authority.	1997
Honesty in Environmental Analysis and Legislation (HEAL) v. Central Puget Sound Growth Management Hearings Board, 96 Wn. App. 522, 979 P. 2d 864	Local governments must give substantial consideration to the best available science when developing critical area policies and regulations. The best available science requirement is intended to ensure that critical areas regulations are not based on “speculation and surmise.”	1999

Case Title	Subject Summary	Year
Mitchell, et al., and Swinomish Indian Tribal Community v. Skagit County, 01-2-0004c	“Enhancement” versus “protection” requirements. Best available science used successfully to determine local applicability for existing and ongoing agriculture. Critical and agricultural areas goals met with a well-managed and monitored program.	2001
Swinomish Indian Tribal Community v. Skagit County, 02-2-0012c	RCW 36.70A.060(2) and .040(1) do not require buffers on every stretch of every watercourse containing or contributing to a watercourse bearing anadromous fish to protect the existing functions and values of fish and wildlife habitat conservation areas in ongoing agricultural lands.	2003
Whidbey Environmental Action Network (WEAN) v. Island County, 122 Wn. App.156, 93 P.3d 885	An exception from critical areas regulations for agricultural activities must be supported by evidence in the record that such an exception is necessary and that the best available science was employed in crafting the exception.	2004
Whidbey Environmental Action Network (WEAN) v. Island County, 98-2-0023c	Based on the County’s reasoned review of the factors in WAC 365-195-905(5) for determining if the NRCS BMPs constitute best available science; and the assessment of the state agencies with expertise in this area – Ecology, Fish and Wildlife, and CTED <sup>1</sup> –the Board finds that the NRCS BMPs constitute best available science for the regulation of ongoing noncommercial agricultural practices in Island County, so long as they are accompanied by monitoring and an adaptive management program. The 2006 case was appealed. It was concluded that the breadth of the critical area exemptions to all rural lands was not supported by the record. The County addressed this by adopting regulations limiting the exemption to land zoned commercial agriculture and rural agriculture, lands participating in the agricultural tax program pursuant to chapter 84.34 RCW, or lands that are encumbered in perpetuity by a recorded easement created for the purpose of preservation of agricultural purposes. In 2015, the Board found Island County in compliance.	2006, 2015
Swinomish Tribe & Washington Environmental Council v. Western Washington Growth Management Hearings Board 12 17 22 No. 76339-9	Protection of critical areas and anadromous fish found to be mandatory per the requirement of the GMA. Enforcement of watercourse protection measures and more specificity in monitoring and adaptive management measures necessary.	2007

<sup>1</sup> Now, the Washington State Department of Commerce.

Case Title	Subject Summary	Year
Clallam County v. Western Washington GMHB, 130 Wn. App. 127, 121 P. 3d 764	The court concluded that preexisting agricultural uses are not exempt from all critical areas regulation. The court also held that the county was not limited to exempting only designated agricultural resource land from full critical areas regulation and that it may expand its exempt agricultural land to meet its local conditions. However, the county must balance such expanded exemption with corresponding restrictions that take into account the specific harms threatened by the expanded class of farm lands.	2008
Protect the Peninsula's Future & Washington Environmental Council v. Western Washington GMHB & Clallam County, 185 Wn. App. 959	The Legislature amended the GMA in 2011 to create the VSP, it provided in RCW 36.70A.735 that if a county opting into the program was unable to implement a watershed work plan for the reasons provided in sub (2) of the section, the county could avail itself of options for compliance including adopting Clallam County's ordinances for protecting critical areas in areas used for ag activities. Clallam County did not opt to participate in the VSP. In response to a challenge for failure to update its critical areas ordinance, Clallam County argued that the Legislature had validated the County's 2001 ordinance. The court disagreed and held that Clallam County's ordinance was compliant only for those counties participating in the VSP. Because Clallam County was not participating, the county would have to comply with the "traditional" requirements of RCW 36.70A.060 rather than the alternative requirements for VSP participants.	2015
Whidbey Environmental Action Network (WEAN) v. Island County, 14-2-0009	The Board found a violation of RCW 36.70A.060 due to the County's failure to establish clear standards for the exercise of administrative discretion regarding the extension of time for continuing an exemption. The Board's concern is the lack of adequate standards to guide a County administrator in determining what constitutes an "appropriately limited and reasonable amount of time." The County has the obligation to protect critical areas and the absence of clear standards could lead to the resumption of agricultural activities, with potential negative impacts on the functions and values of FWHCAs, following a decade or more of no agricultural activity.	2015

## **1.2 Key Critical Areas Case Rulings: *Protect the Peninsula's Future v. Growth Management Hearings Board and Clallam County***

In 2005, Clallam County updated their CAO to reflect the requirements of the GMA for agricultural activities in and near critical areas and associated buffers. Previously, their CAO exempted pre-existing agricultural operations from the provisions in their development regulations. Protect the Peninsula's Future (PPF), an environmental nonprofit organization, challenged the County's broad exemptions for agriculture and brought the issue to the Growth Management Hearings Board (GMHB). In response, Clallam County amended the ordinance, but was again brought to the GMHB and the Court of Appeals for compliance review. The Court of Appeals held that the GMHB correctly ruled; the County could not exempt all pre-existing agriculture from critical areas regulations.

In 2007, further decisions and updates were put on hold when the Legislature placed a moratorium on CAOs while the Ruckelhaus Center conducted a policy study on the issue of agricultural lands and critical areas. The moratorium was lifted in 2011 with the GMA amendment to establish the Voluntary Stewardship Program (VSP). Clallam County did not elect to participate in the VSP and PPF carried forward with their challenge of the County's agricultural exemptions to the GMHB. However, the County moved to dismiss the review, citing the newly amended GMA VSP section, RCW [36.70A.735](#), which states that counties that do not develop approved workplans within the required timeline, may be required to adopt development regulations from a list of four counties, including Clallam County.

The County argued that the Legislature implicitly validated the County's critical areas regulations by incorporating them into the 2011 statutory provisions that established the VSP. As a result, the GMHB dismissed and rescinded its prior finding that the County was out of compliance. PPF appealed this decision to the Court of Appeals. The Court held that the Legislature chose to distinguish alternative pathways to GMA compliance for counties that have elected to participate in the VSP and counties that have not, and that only the VSP counties can comply with the GMA by adopting Clallam's regulations. Therefore, it held that [RCW 36.70A.735\(1\)\(b\)](#) does not reflect a legislative determination that Clallam's regulations unconditionally comply with the GMA's critical areas protection requirements. The Court reversed the Board and remanded the matter back to the Board for further proceedings consistent with its opinion. Clallam County was given time by the Board to resolve the issue and bring the updated ordinance into compliance with the GMA.

### **Clallam County Updated Ordinance Includes:**

- Qualifying existing and ongoing agricultural activities may continue if they do not result in expansion or significant adverse impacts to a critical areas or its buffer. New agricultural activities or the expansion of existing agricultural activities are must comply with the CAO.
- Agricultural activities that do not meet the definition of existing and ongoing agricultural are required to comply with wetland protection standards and aquatic habitat conservation area standards.
- A new section, “Alternate Standards” applies to existing and ongoing agricultural activities occurring on or within 200 feet of aquatic habitat conservation areas and wetlands. They may deviate from the protection and buffer standards in the CAO if they comply and enroll in the alternate standards program.
- Alternate standards require a worksheet with a [risk assessment](#), which rates agricultural activities into low, medium and high risk categories. A farm plan is required for high-risk ratings.
- Monitoring will be conducted annually on existing and ongoing agriculture enrolled in the alternate standards program.
- Adaptive management will be used to determine if existing and ongoing agricultural activities are found to be contributing to a downward trend of baseline functions and values.
- All existing and ongoing agricultural activities must not cause harm or degrade the existing functions and values of aquatic habitat conservation areas, wetlands, or their buffers.

### **1.3 Key Critical Areas Case Rulings: *Swinomish Indian Tribal Community & the Washington Environmental Council v. Skagit County***

Skagit County contains approximately 115,000 acres of agricultural land designated as long-term commercially significant. Much of the agricultural land found in the County is also within critical areas, which the GMA requires the County to protect. In short, riparian farm land found in Skagit County may be considered both agricultural land and a critical area.

Agriculture in the area is unique. Many of Skagit County’s agricultural operations have been in production for up to 100 years. The County also boasts the Skagit and Samish River watersheds, which the state has described as the most significant watersheds in Puget Sound due to the role they play in salmon recovery. They are home to at least six salmon species and two endangered fish species. Agricultural production and the fishing industry are of economic significance to the County.

The Swinomish Tribe and Washington Environmental Council appealed Skagit County's CAO before the Western Washington GMHB. The appeal addressed the GMA requirement that jurisdictions protect critical areas and give special consideration to conservation and protection measures to preserve or enhance anadromous fisheries in [RCW 36.70A.172](#).

In 2003, the Western Washington GMHB largely upheld the County's effort to comply with the GMA, with a couple of exceptions, one of which stated that the County needed more specificity in their monitoring and adaptive management programs. In 2005, the GMHB found that the County had not corrected the deficiencies as identified in the 2003 decision within the 180 days as directed. Then, in 2007, the Washington Supreme Court decision consolidated these two separate decisions by the Western Washington Growth Management Hearings Board and upheld both of the Board's decisions.

### **Key Findings**

- Mandatory riparian buffers are not required on existing agricultural lands.
- Benchmarks are required in adaptive management plans for effective monitoring.
- Existing and ongoing agriculture cannot harm or degrade critical areas, the "no harm" standard.
- The Court affirmed the County's 'no harm' standard, clarifying the minimum requirement under GMA is to protect critical areas by maintaining existing conditions.
- The Court affirmed the GMA does not require enhancement, though it is allowed.

### **1.4 Ruckelshaus Center Study**

In 2007, following the *Swinomish v. Skagit County* Supreme Court decision, the Legislature directed the William D. Ruckelshaus Center (the Center) to address the challenging policy issue regarding protection and enhancement of critical areas within areas where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture in the state of Washington ([SSB 5248](#)) and [SSB 6520](#)). The Center established a critical areas committee to conduct research and facilitate discussions with tribal and county governments, and representatives from the agricultural and environmental communities. Together they developed solutions and new approaches that would enable counties to more effectively protect critical areas while preserving agricultural land. In 2010, the Center produced an [impact report](#) which outlined an alternative framework for protecting critical areas in agricultural land, known as the Voluntary Stewardship Program. A year later the Growth Management Act was amended to include the Voluntary Stewardship Program in [RCW 36.70A.700 - 760](#).



of farmers, tribes, and local environmental groups and agencies, will develop watershed work plans with goals and measurable benchmarks to determine the progress and success of the program over time. Counties, together with agricultural landowners, will develop stewardship plans, including best management practices specific to their property. The stewardship plans are aimed at protecting critical areas while maintaining the viability of the landowner's agricultural operation. The VSP applies to all areas where agricultural activities are conducted and not just designated agricultural resource lands.

Counties not participating in the VSP are still required to protect critical areas, and will follow the more traditional approach, using development regulations mandated by the GMA. Additionally, if a VSP county develops a work plan that is not approved, or the work plan's goals and benchmarks have not been met, or the county has not received adequate funding, the counties may be required to adopt development regulations to protect critical areas in areas used for agricultural activities ([RCW 36.70A.735](#)).

## Chapter 2: Critical Areas Ordinance Review

### 2.0 Critical Area Ordinance Review: Twelve Washington State Counties

Twelve Washington counties, predominantly located in the western portion of the State, are not enrolled in the VSP and will continue to protect critical areas and agricultural land with development regulations. This report is based on a thorough review of those non-VSP CAOs. The report summarizes CAOs that were current at the time the report was written. Information provided in this document is subject to change when jurisdictions update their CAOs. Table 2 lists the County's reviewed for this report and the year and date they adopted ordinances pertaining to agriculture within their CAOs.

**Table 2. Non-VSP Counties Critical Ordinance Review**

County	Date of Ordinance
Clallam	2016-11-22
Clark	2006-08-03
Island	2008-03-17
Jefferson	2008-03
King	2005-01-01
Kitsap	2005 – Currently in update process. Amendments expected by mid-2017
Klickitat	2013-08-06
Pierce	Ag sections updated in 2014, 2015 & 2016
Skamania	2003 & 2007
Snohomish	2015-09-02
Wahkiakum	2000-12-19
Whatcom	2005 – Currently in update process. Amendments expected by end of 2016

Local governments applied a wide variety of approaches throughout the State to protect critical areas and agricultural land. The variation ranges from the complete exemption of agricultural and ranching activities in critical areas, to very specific guidelines for performance standards, mitigation and conservation.

Although many counties in Washington are not participating in the VSP, they are implementing voluntary and incentive-based measures in their CAOs. [WAC 365-196-830\(7\)](#) recommends local governments develop and implement alternative measures to protect critical areas with both regulatory and non-regulatory methods. Most jurisdictions provide voluntary and recommended measures to protect critical areas within their development codes, including the opportunity for farm operators to develop a farm or stewardship plan.

County development regulations vary based on several factors, including whether or not the agricultural use is “new” or “existing”, how “new” and “existing” are defined, the types of agricultural uses on the property, the type of land the agricultural activity occurs on, the type of critical area involved, and whether or not a farm plan is in use.

Each county regulates agriculture use in critical areas differently, based on their community’s unique needs and ecology. Some counties do not address agricultural activities within each critical areas chapter, and instead regulate or exempt agricultural uses and activities generally for all critical areas.

Several commonalities exist within the non-VSP County CAOs as well. For example, most counties regulate the following activities in some if not all critical areas:

- Clearing
- Grading
- Dumping
- Discharging
- Filling
- Excavating
- Removing, dredging, draining, flooding or disturbing the water level or water table
- Storage and use of agricultural chemicals

The basis for counties commonly regulating these activities is due to their potential adverse impacts on critical areas.

## **2.1 Common Critical Areas Ordinance Exemptions**

A variety of activities may be commonly exempt from CAOs with a recommendation to minimize adverse impacts to critical areas. Most specifically, if existing and ongoing agricultural uses do not result in significant adverse impacts to a critical area or its buffer, and implements best management practices, they are typically exempt. A list of low-impact or minimal harm agricultural activities are commonly listed, defined or included in a table within the ordinance. Less commonly, ongoing agricultural activities are exempt if in compliance with an approved farm plan. Here are some of the more common exemptions found in critical areas regulations:

- Most existing and ongoing agricultural uses considered to be low-risk to critical areas and their buffers.
- Maintenance, operation, reconstruction or remodeling of existing infrastructure, drainage and irrigation ditches and farm ponds.

- Uses or structures existing on the effective date of the ordinance may typically continue if they are used in substantially the same manner and for the same purpose as on that date.

## 2.2 Critical Areas Ordinance Definitions

All county CAOs include definitions for activities and practices related to agricultural operations and critical area protection. The list of terms varies among counties, but several common defined terms include: adaptive management, agricultural activities, agricultural land, existing and ongoing agriculture, animal feeding operation, best available science, best management practices, enhancement, farmland, farm pond, farm plan, livestock management, long-term commercial significance, maintenance or repair, normal maintenance, buffer, wetlands, wetland alteration, and riparian area.

## 2.3 “Ongoing and Existing Agriculture”: Description and Definition

Every county addresses common themes related to ongoing and existing agriculture, including a definition, when an existing and ongoing operation ceases, and a list of activities, exemptions and regulations that apply.

Existing and ongoing agriculture is often defined as agricultural activity that has been conducted or maintained within the past five years. However, jurisdictions apply a broad spectrum of definitions for existing and ongoing agriculture in CAOs throughout Washington. All counties allow agricultural uses to lay dormant for a specified period of time before they are considered no longer existing and ongoing; however, the timeline for dormancy varies widely among counties. In this review, the range varied from 12 months to 25 years. Five years is the most common length of time that an agricultural operation is allowed to lay dormant before the exemption status is affected. If agricultural land is enrolled in a federally recognized conservation program, it is not considered to be idle, and continues to meet the definition of existing and ongoing agricultural activity.

In 2014, Island County was challenged by the Whidbey Environmental Action Network (WEAN) for failing to protect fish and wildlife habitat conservation areas as required by [RCW 36.70A.060](#). The County CAO stated that existing and ongoing agriculture ceased to be ongoing if it laid idle for more than 5 years, unless an extension was granted, or the property was enrolled in a federal

***Klickitat County** defines existing agricultural or ranching activities as those that have been active in 2 out of the last 5 years.*

conservation program. The ordinance allowed for an extension to the five-year period by a reasonable amount of time in the event of unavoidable events that would make active agricultural use impossible, such as a death or difficulty selling the property. In 2015, the GMHB issued a [final decision and order](#) that determined the County had failed to establish clear standards for extending critical area exemptions to agricultural practices because their definition included a vague and potentially unlimited extension standard. Island County then amended their CAO definition to state that existing and ongoing agriculture is exempt if it lays idle for three years. The option for a time extension was removed from the definition. In 2016, the GMHB found this update to be in compliance with the requirements of the GMA.

Existing and ongoing agricultural activity exemptions and allowances for maintenance or repair may not continue or transfer when a new use is established and the existing and ongoing agricultural activity is discontinued. If an agricultural use is converted, the converted use may be subject to certain provisions in the ordinance.

In addition to defining the length of time an agricultural activity must be in use, further definitions of ongoing and existing agriculture commonly include:

- Current use in areas designated as agricultural lands of long-term significance.
- Activities involved in the production of crops or livestock, operation and maintenance of existing farm and stock ponds or drainage and irrigation ditches.
- Changes between agricultural activities, such as crop rotation, are still considered ongoing and existing activities.
- Typically, 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. In a few instances, a county offers an extension for the ongoing or existing use designation.

## **2.4 “Agricultural Activities”: Description and Definition**

Nearly all county CAOs reviewed for this report include an “agricultural activities” definition. The definitions vary among jurisdictions due to characteristics of the agricultural land within their county. For example, Pacific County includes aquaculture activities and inland counties primarily define agriculture pertaining to the production of crops, livestock, grazing, cultivation and harvesting. Several jurisdictions reference an RCW for their definition. The two common RCW definitions are described below.

The Voluntary Stewardship Program references the Shoreline Management Act’s definition of agricultural activities [RCW 90.58.065](#). The definition states:

“agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation”.

Jurisdictions, such as Island County, also refer to [RCW 84.34.020](#) (for open space, agricultural and timberlands) to define agricultural activities within their development regulations. Ordinances do not typically include forest practices in the definition of ongoing and existing agricultural use.

**Wahkiakum County**  
exempts existing and ongoing agriculture from critical areas protection, however, in order to receive the exemption, the county administrator may require documentation such as a dated photograph and/or video, old maps drawn by registered engineers or surveyors, evidence of established agricultural plants, farm records or farm plans prepared by the local conservation district of the agricultural extension service.

## **2.5 “New Agriculture”: Description and Definition**

New and expanded agriculture is not addressed consistently among jurisdictions. In general, counties do not include a definition for ‘new’ agriculture in their CAO. In some instances new agriculture is regulated, but primarily if the development code exempts ongoing and existing agricultural uses, it is presumed that anything not meeting that definition, including new or expanded agriculture, must comply with the provisions in the ordinance. [Jefferson County](#) defines “new” agriculture as agricultural activities proposed or conducted after 2003 that does not meet the definition of “existing and ongoing” agriculture. Several county development codes regulate new or expanding agriculture per the conditions of their CAO or their livestock ordinance. [King County](#), for example, states that new agriculture or the expansion of

agriculture is allowed in a specific set of critical areas if the use meets the development standards for each of the critical areas. Clallam County requires new and expanded agricultural activities to comply with both the substantive and procedural provisions of their ordinance.

## **2.6 Impact Ratings for Agricultural Activities**

Several counties use intensity or impact ratings to categorize and regulate agricultural activities in critical areas. The rating system is used to categorize agricultural activities into low, moderate and high-impacts. The impact level determines allowed uses and effective regulations for each of the five critical areas, with primary focus on wetlands and buffers.

[Clallam County](#) uses high-to-low risk assessment criteria for evaluating existing and ongoing agriculture within and adjacent to aquatic habitat conservation areas and wetlands. The ratings are based on risk assessment scores from six performance standards and four environmental categories (river and streams, wetlands, ponds, irrigation/drainage ditches, livestock and heavy use areas, and manure storage). Depending on the rating: high, moderate or low-risk, various protection standards are required. Agricultural activities are compliant if they score moderate-to-low-risk in the assessment. If the agricultural use is found to be causing harm or receives a high-risk rating in 1 of the 6 performance standards then the agricultural operator is required to develop a farm conservation plan. The purpose of the plan is to reduce the risk assessment from high to moderate.

In [Whatcom County](#) ongoing low-impact agricultural uses are permitted, but also subject to monitoring and adaptive management through a required standard farm conservation plan. Ongoing moderate-to-high-impact farm or livestock operations follow the same guidelines, but must implement a custom farm conservation plan. [King County](#) also uses farm plans to bring agricultural activities with moderate-to-high-impacts into compliance with low-to-moderate impact standards.

# Chapter 3: The Five Critical Areas and Agricultural Regulations

## 3.0 The Five Critical Areas and Agriculture Regulations

Non VSP counties' CAOs were reviewed to provide a summary of common regulations and exemptions that relate to agricultural operations in critical areas. The five critical areas include: wetlands, critical aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas and frequently flooded areas. Some jurisdictions provide a general exemption for low-impact existing and ongoing agricultural activities within critical areas and other counties regulate agricultural uses within a specific critical areas chapter. Agricultural uses are rarely regulated within each critical area. Performance standards are commonly used as a means to protect critical areas from adverse impacts associated with agricultural activities.

### 3.1 Geologically Hazardous Areas

Geologically hazardous areas are defined as areas that are susceptible to erosion, sliding, earthquake, or other geological events. Due to the risks associated with these areas, they are not suited to the siting of commercial, residential, or industrial development [RCW 36.70A.030\(9\)](#).

The review of development regulations showed that many counties permit existing and ongoing agricultural uses within geologically hazardous areas. The exemption generally includes all geologically hazard areas, but in some instances the regulation specifically includes permitted or prohibited activities in erosion hazard areas, landslide areas, volcanic areas, and seismic hazard and channel migration zones. In [King County](#), for example, horticultural activities, grazing livestock, and maintenance of farm ponds, fish ponds or livestock watering ponds that have been in continuous existence are allowed in landslide areas over 40 percent slope and in steep slopes. With a farm management plan, maintenance of agricultural drainage, if used by salmonids, and construction of a farm field access drive are also allowed in those areas.

**Whatcom County:**

“Agricultural activities may be allowed within geologically hazardous areas without a farm conservation plan; except that a farm conservation plan shall be required for agricultural areas within landslide hazard areas and associated buffers.”

### 3.2 Wetlands

Wetlands are defined as areas that are inundated by surface or groundwater at a frequency and duration to

support vegetation adapted for life in saturated soils. Wetlands generally include swamps, marshes, and bogs ([RCW 36.70A.030\(21\)](#)). The definition does not include artificial wetlands such as irrigation and drainage ditches, grass-lined swales or farm ponds.

Agricultural activities can cause disturbances to wetlands in a variety of ways. The conversion of fields to pastures can alter the structure of a wetland, changes in water use due to agricultural practices affect wetlands, and nutrients and chemicals associated with agricultural operations can also impact sediment, flow and the drainage of wetlands. For these reasons, most counties provide detailed guidance on allowed and regulated agricultural uses in wetlands and their buffers more than in any other critical area.

Jurisdictions categorize wetlands based on the ecological characteristics of the wetland and standards from state and federal sources. The categories are used to apply appropriate regulations to protect wetlands from adverse impacts associated with a variety of activities, including those associated with agricultural operations.

Below is a list of the most common permitted and regulated uses related to agricultural activities in wetlands and/or wetland buffers.

***Permitted Uses:***

- Construction of a structure that is associated with an agricultural use; or the reconstruction, remodeling, or maintenance of such structures in wetland buffers (subject to specific criteria)
- New agricultural activities, such as horticulture, grazing livestock, maintenance of agricultural drainage, farms ponds and fish ponds, livestock watering pond, and a farm field access drive may be permitted with some of the following actions: an approved farm plan, mitigation, compliance with wetland protection standards, wetland boundary buffer signs, aquatic habitat conservation area standards, or a wetland application and delineation report. These same activities, if in continuous existence, may also be allowed in aquatic areas, buffers and severe channel migration areas.

***Regulated Uses:***

- Removal, excavation, grading, or dredging of material of any kind, including the construction of ponds.
- Reconstruction, demolition, or expansion of any structure.
- Destruction or alteration of wetland vegetation through clearing, harvesting, shading, application of herbicides or pesticides, or planting of vegetation that would alter the character of a regulated wetland.

- Activities that would result in a significant change of physical or chemical characteristics of wetlands water sources including quantity.
- Agricultural activities adjacent to agricultural riparian areas.
- Introduction of pollutants.
- Animal husbandry.
- In Kitsap County, farm conservation plans or fencing may be required to avoid impacts to wetlands.
- Conversions of wetlands to agricultural use are subject to compensatory mitigation, including avoidance and minimization.

Several counties do not regulate all agricultural uses in wetlands. Instead, they address a specific agricultural activity that is known to be high-risk in a wetland critical area. Another approach jurisdictions use, rather than listing prohibited uses, is to provide a list of permitted activities in wetlands and buffers with the requirement for all reasonable measures to avoid adverse impacts be implemented.

The Washington State Department of Ecology's (Ecology) [Wetland Guidance for CAO Updates Document](#) acknowledges the broad exemption typically given to existing and ongoing agricultural activities. However, they caution that these activities should be clearly defined and should not include removing trees, diverting or impounding water, excavation, ditching, draining, culverting, filling, grading or employ similar activities that cause adverse impacts to wetlands or other aquatic resources. Additionally, Ecology's guidance document states that maintenance of agricultural ditches should be limited to removing sediment in existing ditches to a specified depth at a date of last maintenance. Lastly, they advise that conversion of wetlands to new agricultural use should be subject to the same regulations for new development.

[Skamania County](#) allows the following in wetland buffers:

- Structures under 120 sq. feet in area, which are exempt from building permits
- Existing structures already located within the watershed protection area buffers, ponds, lake buffers, streams, creeks, and rivers that expand 100% or less of their original footprint.

### 3.3 Fish and Wildlife Habitat Conservation Areas

Fish and wildlife habitat conservation areas provide habitats and species needed for the functional integrity of an ecosystem. Fish and wildlife habitat conservation areas include: areas where endangered, threatened or sensitive species are found, habitats and species of local importance, commercial and recreational shellfish areas, kelp and eelgrass beds and other forage fish spawning areas, naturally occurring ponds under twenty acres, lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity, and state natural area preserves, natural resource conservation areas and state wildlife areas ([WAC 365-190-130](#)). Fish and wildlife habitat conservation areas do not include irrigation delivery systems, irrigation infrastructure, irrigation canals or drainage ditches within the boundaries or maintained by a port or irrigation district or company ([RCW 36.70A.030\(5\)](#)).

Due to the important functions and values of fish and wildlife habitat conservation areas for key wildlife and their habitats, most county CAOs regulate agricultural activities within these critical areas. Additionally, compensatory mitigation may be required for all adverse impacts that cannot be avoided.

Below is a list of common permitted and regulated agricultural uses in fish and wildlife habitat conservation areas.

#### ***Permitted Uses:***

- Existing and ongoing agricultural activities, such as: ditching, tilling, dredging, or grading if conducted to repair and/or maintain existing irrigation and drainage systems necessary for agriculture, existing structures.
- Construction of a structure that is associated with an agricultural use.
- Reconstruction, remodeling, or maintenance of such structures (subject to specific criteria).

**Island County:** Buffer provisions in fish and wildlife habitat conservation areas are not intended to require the establishment of natural buffers within the boundaries of existing and ongoing agricultural activity, unless it's related to mitigation for a development unrelated to the existing and ongoing agricultural activity.

- Existing and ongoing: horticultural activities, grazing livestock, construction of a farm field access drive, maintenance of livestock manure storage facilities, agricultural drainage, farm ponds, fish ponds, or livestock watering ponds may be allowed in wildlife habitat conservation areas and wildlife habitat networks, if they have been in continuous use. The same activities are allowed if they are new uses with an approved farm management plan.

**Regulated Uses:**

- Chemical application, the use of pesticides, herbicides, or fertilizers in fish and wildlife habitat conservation areas unless permitted through an approved farm plan or the United States Environmental Protection Agency.
- New cultivation.
- Chemical storage is not permitted within a fish and wildlife habitat conservation area or its buffer.
- Use of livestock in aquatic habitat conservation areas or their buffers, proposals to allow livestock access to aquatic habitat conservation areas, or alterations of these areas for the use of livestock may require impacts to be controlled through a mitigation plan.
- Alteration of aquatic habitat conservation areas.
- Fencing may be required in buffers when agricultural activity is introduced in fish and wildlife habitat conservation areas.

**3.4 Frequently Flooded Areas**

Frequently flooded areas are lands in the floodplain which have at least a 1 percent or greater chance of flooding in any given year, or are within areas that flood due to high groundwater. These areas can include: streams, rivers, lakes, coastal areas, wetlands,

[Pierce County's](#) allowed uses in floodways and flood fringe areas: Storage of agricultural chemicals, fertilizers, pesticides, and similar hazardous materials shall be permitted only where no other on-site storage alternative outside the floodplain exists and the building permit is accompanied by a written description of how on-site storage procedures will prevent the release of agricultural chemicals during a flood event. Agricultural accessory structures are also regulated in floodways and flood fringe areas with requirements for their design. Livestock flood sanctuaries are allowed in floodways if certain criteria are met, as required by [RCW 86.16.190](#).

and areas where high groundwater forms ponds on the ground surface [[WAC 365-190-030\(8\)](#) and [RCW 36.70A.030](#)]. Frequently flooded areas offer habitat that supports salmon and other species. Many jurisdictions regulate agricultural activities in floodplains, floodways and flood hazard zones to protect riparian habitats, endangered species and reduce flood risks.

Commonly permitted and regulated agricultural activities within frequently flooded areas are included below.

***Permitted Uses:***

- Agricultural activities in compliance with the USDA Natural Resources Conservation Service standards through an approved farm management plan may be permitted in flood hazard zones.
- Minor repairs of an existing structure within the same footprint may be approved in floodways.
- Repairs and reconstruction of non-residential agricultural structures on the farm site outside of the designated floodway may be permitted.
- With specific restrictions, storage and manufacturing of compost from on-site feedstock may be permitted outside Federal Emergency Management Agency (FEMA) mapped floodways in farm land.
- Import and application of compost for soil amendment (quantity regulated) on agricultural land may be permitted when on land outside FEMA floodways.
- With compliance of a farm conservation plan and best management practices, the construction of access roads in special flood hazard areas as designated by FEMA in agricultural zones may be permitted.
- Agricultural activities that do not require the installation of structures, do not require a building permit, and that do not have associated fill may be allowed in floodways.
- Repair, reconstruction, replacement and improvements to existing farmhouses within Agricultural Resource Land or Rural Farm zone may be allowed when in compliance with a list of special conditions in Pierce County.

***Regulated Uses:***

- Storage of agricultural chemicals, fertilizers, pesticides, and similar hazardous materials in agricultural accessory structures that may contaminate surface and groundwater in the event of a flood. This includes storage in agricultural accessory structures.
- [King County](#) regulates the construction or expansion of existing farm pads and existing livestock manure storage facilities in zero-rise flood fringe areas.

### 3.5 Critical Aquifer Recharge Areas

Critical aquifer recharge areas ordinances are vital to protect both the quality and quantity of a community's drinking water supply. The GMA defines critical aquifer recharge areas as areas with a critical recharging effect on aquifers used for potable water. The quality and quantity of groundwater in an aquifer is linked to its recharge area ([WAC 365-190-100](#)), making them vulnerable to contamination. Protecting critical aquifer recharge areas from contamination sources is very important. For this reason, many jurisdictions regulate agricultural activities that present the most risk to groundwater quality. Many counties use performance standards to protect critical areas from adverse impacts associated with a particular agricultural activity.

Benchmarks, monitoring and adaptive management for critical aquifer recharge areas are different from surface observable critical areas, because measurements of groundwater quality and quantity is from sampling or measuring wells, due to the expense associated with it and the difficulty of access to the sites. Groundwater monitoring at agricultural sites are done voluntarily because it requires permission from the property owner. Some jurisdictions state goals to improve groundwater quality or to maintain uncontaminated sources or may even have a groundwater monitoring program. Below is a list of commonly permitted and regulated agricultural uses in critical aquifer recharge areas.

#### ***Permitted Uses:***

- New agricultural activities that do not involve hazardous substance handling or application may be allowed within an aquifer recharge wellhead protection area with a farm management plan prepared by an approved entity that certifies the water quality and quantity within the aquifer is maintained.

#### ***Regulated Uses:***

- [Clallam County](#) New agriculture or hobby farms are required to implement best management practices for animal keeping, animal waste disposal, fertilizer use, pesticide use, waste water applications, and stream corridor management and seek the technical assistance of the conservation district or cooperative extension agent.
- New agriculture or hobby farms in Clallam County are required to use best management practices for animal keeping, animal waste disposal, fertilizer use, pesticide use, waste water applications, and stream corridor management.
- Animal feedlots, and large-scale storage or use of pesticides, insecticides, herbicides, or fertilizers used by commercial or agricultural operations are typically prohibited.

## Chapter 4: Critical Area Categories Related to Agriculture

### 4.0 Critical Area Categories Related to Agriculture

This section includes a summary of agricultural-related categories commonly found in the CAOs reviewed for this report. Most counties specifically address nonconforming uses and structures, maintenance, repair, reconstruction and remodeling, and agricultural chemicals. An overview of policy recommendations and requirements related to incentives, outreach, monitoring, adaptive management, best management practices and best available science are outlined below.

### 4.1 Nonconforming Uses, Structures and Preexisting Structures

All jurisdictions address nonconforming and preexisting structures within CAOs. Some counties additionally distinguish between agricultural structures and other types of structures. Below is a list of regulations that apply to nonconforming structures and uses.

- Any building or structure that was on the premises prior to or on the effective date of the critical areas ordinance adoption may typically be continued.
- A nonconforming structure destroyed by fire, explosion, flood or other casualty may be restored or replaced if an alternative that would comply with the standards of the ordinance cannot be found.
- Reconstruction of the nonconforming structure is typically only permitted within a specified time period, often ranging from 12-18 months of the damage. The reconstruction cannot expand, enlarge or increase the structure.
- Any regulated development intended to alter, expand, replace, or reconstruct, or otherwise increase the nonconformity of a pre-existing use or structure that is located within a critical area or its buffer.
- If a nonconforming use is abandoned for a period of twelve months or more, the future use would be subject to the provisions of the ordinance. After twelve months, if a building permit is requested, removal of the nonconforming building and restoration of the critical area may be required to comply with the provisions in the ordinance.
- Expansion, alteration or intensification of nonconforming uses, buildings/structures (excluding normal maintenance).

## 4.2 Access Roads

Exemptions and regulations pertaining to access roads are typically located within the critical areas chapter of the CAO. [Whatcom County](#) allows access roads in landslide hazard areas if reasonable measures are taken to minimize risks and other adverse impacts. In [Wahkiakum County](#), access roads are exempt. The construction of access roads may be allowed in special flood hazard areas as designated by FEMA in agricultural zones, wetlands, and wildlife habitat conservation areas if in compliance with a farm conservation plan and best management practices.

## 4.3 Reconstruction and Remodeling

Reconstruction and remodeling of existing structures are exempt if they do not further encroach or serve to expand, enlarge or increase the structure into the critical area or its associated buffers. Reconstruction, restoration or repair of an existing legal structure is commonly permitted, so long as it meets the following criteria: it was damaged by fire,

[King County](#) allows new farm field access roads in wetlands and wildlife habitat conservation areas with an approved farm management plan.

explosion, flood, earthquake or other disaster or casualty. Typically, reconstruction, remodeling, repair or restoration must be conducted in a particular timeframe, generally between twelve months to three years. After that time period has elapsed, any reconstruction or repair would be subject to the conditions found in the development regulations. Structures in existence on the effective date of the ordinance that do not meet the setback or buffer requirements may be remodeled or reconstructed so long as that activity does not further intrude into the critical area or its buffer. [Pierce County](#)

allows repair, reconstruction, replacement and improvements to existing farmhouses within agricultural resource lands or rural farm zones in floodways when they are in compliance with the standards of their CAO and follow a list of very specific guidelines. They provide a similar list of standards to approve the construction of new and existing non-residential agricultural structures.

## 4.4 Maintenance and Repair

Normal maintenance and repair of existing legal structures is typically exempt if the maintenance or repair complies with all sections in the code. Normal and routine maintenance and repair, in some cases, is extended to preexisting farm ponds, manure lagoons, livestock

water ponds, fish ponds and irrigation and drainage ditches so long as the activity does not convert wetlands not currently being used for that activity.

#### **4.5 Fencing and Signage**

Some jurisdictions require fencing to protect wetlands and buffers from adverse impacts associated with livestock and to enhance water quality. For example, [King County](#) requires fencing setbacks for livestock. [Whatcom County](#) may exempt the maintenance and/or repair of existing infrastructure improvements to fences with written notification to the County technical administrator.

**Kitsap County:**  
Introduction of agriculture in a fish and wildlife habitat conservation area shall include protection measures by installing fencing located not closer than the outer buffer

#### **4.6 Agricultural Chemicals**

County development regulations include restrictions on pesticides, fertilizers, insecticides and herbicides, in at least one of the five critical areas. Most commonly, regulations restrict or prohibit use or storage of agricultural chemicals in floodways, flood fringe areas, aquifer water recharge areas, fish and wildlife habitat conservation areas and their buffers. They may be exempt in certain areas with approval from the US Environmental Protection Agency or Washington State Department of Ecology and must be applied by an applicator licensed through the Washington State Department of Agriculture.

## Chapter 5: Voluntary and Regulatory Approaches

### 5.0 Voluntary and Regulatory Approaches

An overview of policies and requirements commonly found for incentives, outreach, monitoring, adaptive management, best management practices and best available science were not fully outlined in all jurisdictions, but the categories below show additional approaches to encourage critical area protection through both voluntary and regulatory measures.

#### 5.1 Incentives, Funding, Education and Outreach

Jurisdictions are encouraged to implement both regulatory and non-regulatory measures to ensure the protection of critical areas. Several jurisdictions use voluntary and incentive-based recommendations within their CAOs. These counties encourage stewardship of the land to provide benefits to fish and wildlife, often in partnership with the conservation district, federal NRCS and regional non-profit organizations.

[Jefferson County](#) provides general resource education and site-specific assistance to help landowners understand why it is important to improve their management practices in a way that benefits both the landowner and natural resources. The County assists and encourages landowners to participate in private, state and federally funded resource enhancement projects, while also seeking outside sources of grant funds to increase resource stewardship programs. Their countywide monitoring plan documents improved water quality as a result of voluntary landowner stewardship.

Many jurisdictions encourage agricultural land owners to complete farm management plans. The plans can be used to leverage and qualify for federal, state or local funding to implement techniques and strategies to improve agricultural operations.

[Clark County](#) contacts property owners potentially impacted by the critical areas ordinance to offer assistance and technical support in the development of individual stewardship plans. In collaboration with conservation and stewardship groups, the County also develops manuals to explain best management practices and offers seminars and presentations. Nonmonetary incentives are offered to property owners that implement projects that exceed mitigation requirements.

## **5.2 No Harm or Degradation Standard**

Several counties reference the “no harm or degradation standard” in their CAO. The “no harm” standard depends on benchmarks and monitoring data, which may not be available for all critical areas, particularly critical aquifer recharge areas. Clallam County states that existing and ongoing agriculture must be conducted so as to not cause harm or degradation to the existing functions and values of aquatic habitat conservation areas, wetlands, or their associated buffers. A definition of the no harm standard is also included in their ordinance.

## **5.3 Right to Farm**

Several counties refer to right to farm regulations within their CAO, emphasizing that any regulation must also be consistent with the policies set forth in [RCW 7.48.305](#).

## **5.4 Monitoring, Adaptive Management & Performance Standards**

A successful monitoring and adaptive management program establishes baseline information and performance measures with the use of best available science. The GMA does not list a specific requirement for monitoring and adaptive management to assure critical areas protection. In [WAC Chapter 365-195](#), on best available science, jurisdictions are encouraged to monitor and evaluate their efforts in critical areas protection and to include new scientific information as it becomes available ([WAC 365-195-905](#)). In the absence of valid scientific information, cities and counties are recommended to use an adaptive management program in the interim ([WAC 365-195-920](#)). Monitoring of agricultural activities are required for participating counties within the VSP, including goals and benchmarks [\[RCW 36.70A.705\(5\)\]](#).

Farm plans are often subject to monitoring adaptive management to ensure plan goals, strategies and best management practices are effective in the protection of critical areas. Monitoring may include periodic site inspections or self-assessment by the farm operator. This applies to new and expanding agriculture and existing and ongoing farm operators that choose to develop a farm plan. Adaptive management and monitoring may be applied to individual farm plans to ensure stewardship goals are met for that property. In Whatcom County, a technical administrator, in partnership with the farm operator, shall monitor plan implementation with periodic site inspections and self-assessments by the farm operator. In King County, monitoring efforts evaluate the success of farm plans in a programmatic review. The county department of natural resources and parks and environmental review monitor and evaluate the effectiveness of all farm plans in the county in meeting the goals of their critical areas ordinance.

[Clallam County](#) conducts monitoring on farms participating in the alternate standards program. An annual report is issued by the administrator. The report includes the number and location of participants, the risk assessment worksheets, the change in aquatic habitat conservation areas, and wetland native vegetation cover adjacent to agricultural operations. If the report indicates that functions and values are being met, the reports will be conducted every five years.

Performance standards are used to determine the success of conservation plans and mitigation techniques. They are measurable and quantifiable indicators of performance and are often used to evaluate the effectiveness of objectives and goals. Many jurisdictions list specific performance standards within their CAO and in some cases, the performance standards are embedded within the farm plan. Performance standards are used to rate the risk of agricultural activities in critical areas. A risk assessment may be conducted using a series of performance standards to determine allowed uses. Monitoring methods are then used to assess the effectiveness of the performance standards. Whatcom County measures plan performance and implementation strategies by requiring that benchmark conditions be described and documented with photos and written reports within the farm conservation plan.

Performance standards vary depending on the critical area being protected and the type of activity proposed for the area. However, they typically include a timeline of when and what activities will occur, a list and description of what will be monitored, a timeline including implementation and

details of the long-term monitoring and maintenance plans. The length of time for monitoring and maintenance should be sufficient to determine if performance standards have been achieved. The performance standards are focused on maintaining, protecting and enhancing functions and values of the critical area.

### **5.5 Best Management Practices**

CAOs commonly refer to the United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide (FOTG) as the resource for best management practices. The technical guide is the primary scientific reference used by NRCS. It includes localized data for each county with detailed information on conservation techniques of soil, water, air, plants and animals in that geographic area.

Additionally, the following list of agencies is commonly referenced for expert guidelines on performance standards, techniques and technical information to inform the development of best management practices:

- Natural Resources Conservation Service, US Department of Agriculture
- County Conservation Districts
- Washington State Department of Ecology
- Washington Department of Fish and Wildlife
- US Fish and Wildlife Service
- Washington State Department of Agriculture
- Washington Department of Health

In most cases, for project approval, farm plans, stewardship plans, and other documents require a description of best management practices. The Washington State Department of Ecology encourages the use of BMPs in their [Wetland Guidance for CAO Updates document](#). It states that BMPs are intended to minimize the effects of ongoing agricultural activities on water quality, riparian ecology, salmonid populations, and wildlife habitat. While NRCS is the most common resource used to develop BMPs, some counties authorize other sources for the development of a farm management plan. For example, Whatcom County notes that alternatives to NRCS recommendations from a land grant college or a professional engineer with expertise in the area of farm conservation planning may also be used to develop appropriate methods and technologies in a farm conservation plan.

King County farm plans pertaining to livestock operations generally include the following best management practices: building stream or wetland buffers, manure management practices, water runoff management, pasture management and riparian revegetation.

## **5.6 Best Available Science**

Counties and cities are required to include the best available science ([RCW 36.70A.172\(1\)](#)) when developing their critical areas regulations and must give special consideration to conservation and protection measures to preserve or enhance anadromous fisheries. The inclusion of best available science in development regulations is especially important to salmon recovery and to other threatened or endangered species and their habitats, [WAC 365-195-900](#). [WAC 365-195-905](#), describes the criteria for determining which information is the best available science.

The Washington Department of Ecology's (Ecology) publication, [State of the Science](#), provides guidance for protecting and managing wetlands at the local level. Additionally, Ecology staff is

dedicated to working with counties to aide in the development of effective regulations to protect wetlands, using the best available science.

Ecology also has a publication, [Critical Aquifer Recharge Areas Guidance Document](#), which provides guidance for best available science for the protection of the functions and values of critical aquifer recharge areas.

## Chapter 6: Farm Conservation Plans

### 6.0 Farm Conservation Plans

The Voluntary Stewardship Program (VSP) incentivizes agricultural property owners to develop stewardship plans to protect and enhance critical areas and agricultural land. Many of the twelve counties that are not enrolled in VSP similarly utilize the benefits of farm management or conservation plans to ensure best management practices are well developed and implemented on agricultural land within critical areas. Depending on the critical area involved and the risk level associated with the agricultural activity, a farm plan may be required.

Farm management plans are intended to maintain productive and economically viable agricultural land, while protecting and enhancing critical areas and water quality through the use of best available science and effective mitigation measures. The plan typically addresses:

- Farm size
- Soil types
- Slope of the land
- Location of streams and water bodies
- Type of crops or livestock
- Machinery and farm buildings

With this information, the goals of the farm operator are incorporated to make a successful plan. Further, the plan will address any activities that have potential to affect water quality and to reduce impacts from farm activities on natural resources. Solutions to avoid or minimize adverse impacts with mitigation techniques are included. Examples include: manure management techniques, fencing, gutters and downspouts, weed management and pasture renovation.

Farm plans are not only intended for large, commercial operations. King County Conservation District will work with farms of all sizes to develop a unique farm plan. See their [farm plan factsheet](#).

### ***Common farm plan contents:***

- **Goals:** restore or enhance critical areas and hydrologic systems.
- **Inventory maps:** critical areas, designated habitat areas, existing and proposed structures, cleared and forested areas, utilities, roads, driveways, wetlands and property lines.
- **Planning Map, Scope and Timeline:** map and list proposed new agricultural activities, the scope of the agricultural activities, a timeline for their implementation, use of pesticides, fertilizers or other chemicals, and identification of existing habitat functions and values.
- **Implementation Plan:** description and implementation plan for performance standards, integrated pest management, mitigation measures and best management practices to be implemented for the maintenance, restoration and enhancement of critical areas and their buffers.
- **Future Plan:** changes to the site, including structures, land use conversion, and changes to the landscape.
- **Monitoring** to ensure the effectiveness of proposed strategies to protect critical areas. If monitoring shows the farm plan does not effectively protect critical areas a new farm plan may be required. Whatcom County farm plans are also subject to adaptive management.
- **Approval Process:** typically conducted by a NRCS, WDFW or conservation district certified agricultural technician, a qualified planning advisor or the county technical administrator. Approval is based on compliance with the BMPs of the NRCS field guide.
- **Compliance:** Once approved, the farm plan is considered in compliance with the County's critical areas provisions. Compliance is typically sought through education and voluntary measures, but an inspection may be required to confirm compliance. Refusal or inability to implement the farm plan effectively may result in the farm plan being revoked and then the property owner would be subject to provisions in the standard critical areas regulation. County planning advisors may provide suggestions to support compliance, but responsibility for compliance is typically with the farm operator. If compliance is not resolved, enforcement actions per the CAO may be applied.
- **Technical Assistance and Resources:** provided to the property owner through the county, conservation district, watershed improvement district or Washington State University agricultural extension office. This can include workshops, web-based information and manuals.
- **BMPs:** The most recent version of the [USDA NRCS Field Office Technical Guide \(FOTG\)](#) is often referenced for best management practices and standards within the plan.

[Clark County](#) utilizes agricultural/habitat protection plans when the expansion of existing and ongoing agricultural activities will impact riparian habitat areas. The plan includes specific standards for the riparian area and may include mitigation measures on land outside of the riparian area if it works to achieve the standard. A plan may be submitted by a group of landowners or neighbors if their properties are in close proximity. In this case, the standards would apply to all participants in a common plan.

- **Site Inspections:** evaluation, monitoring, compliance and enforcement of farm plan effectiveness are conducted by the County through scheduled site inspections and farm operator self-assessment.

### 6.1 Required Farm Plans

New agricultural activities in critical areas are often only permitted with an approved farm plan. However, a farm plan may not be required for new agricultural uses in all five critical areas. Commonly, farm plans are associated with uses in fish and wildlife conservation areas, wetlands and aquifer recharge areas to protect and enhance water quality. A farm plan may still be required in addition to a permit per the requirement of the development code. If a landowner's agricultural operation is found to be adversely impacting a critical area without appropriate mitigation, a farm plan may be required as a form of enforcement.

In [King County](#), previous farm plans remain valid for existing agricultural activities, but may require amendment if a landowner chooses to expand their agricultural operation.

Some jurisdictions offer two types of farm plans based on the impact of the agricultural activity. Standard

farm conservation plans are typically required for low-impact farm and livestock operations, and custom farm conservation plans are required for moderate and high-impact agricultural uses.

Farm plans may not authorize filling, draining, grading or clearing activities in critical areas or their buffers unless the activities are essential to the ongoing agricultural use, do not expand the boundaries, and the impacts are mitigated. A farm conservation plan does not typically authorize construction of new structures.

In some cases, ready-made agricultural/habitat plans are made available for typical agricultural properties and activities. Plan modifications may be requested by the property owner. The

modification will be subject to the same review and approval process. Rescission of the plan is possible if all agricultural activity has ceased or if a landowner opts to use the County default option.

Nearly all of the twelve counties reviewed for this report make reference to a farm plan within their CAO. Some jurisdictions provide very thorough descriptions of farm plan requirements and others only refer to farm plans for specific agricultural uses in a particular critical area.

Below is a list of the non-VSP counties that utilize farm plans for the protection of critical areas, including a brief description of the farm plan regulation.

- **Snohomish** – Normal agricultural activities are in compliance when a farm conservation plan is developed. The plan shall include provisions for monitoring and maintenance over time to ensure that performance standards are effective.
- **Whatcom** – Low-impact agricultural operations complete a standardized farm conservation plan and moderate or high risk operations are required to complete a custom farm conservation plan.
- **Island** – Existing agriculture may voluntarily comply with a standard or custom farm plan.
- **King** – Four different types of farm plans are available depending on type of agricultural use.
- **Kitsap** – Introduction of agricultural uses that may damage wetlands may be permitted with the implementation of a farm conservation plan. Farm plans are not referenced for other critical areas or agricultural uses.
- **Pierce** – New farm and agricultural activities may be permitted in wetlands and fish and wildlife habitat conservation areas with an approved farm management plan.
- **Clark** – Individual Stewardship plans are used to encourage education and voluntary conservation measures. Property owners with approved stewardship plans are exempt from regulations in the chapter. County staff contacts property owners potentially impacted by wildlife habitat area regulations to assist in the development of a plan.
- **Wahkiakum** – Applicants may be required to establish a farm plan to minimize adverse impacts to wetlands.
- **Jefferson** – Farm plans are required to approve chemical application or storage within fish and wildlife habitat conservation areas.
- **Clallam** – A farm plan is required to address any agricultural activity that receives a high-risk rating in their risk assessment criteria worksheet. The intent of the farm plan is to lower the risk assessment for the performance standards of concern.

Snohomish County states that any confidential or proprietary information contained in a farm conservation plan may be redacted prior to public disclosure.

## 6.2 Voluntary Farm Plans

Farm plans are typically required for new or expanding agriculture and only encouraged for existing agricultural operations. A farm plan may not be required if the farm owner chooses to meet the regulatory buffer standards in the CAO, they obtain a permit, or receive a reasonable use exception.

Clark County encourages voluntary and educational conservation with a proactive approach. The County contacts property owners potentially impacted by

wildlife habitat area regulations to assist in the development of individual stewardship plans. Approved stewardship plans provide property owners with exemptions from regulations for non-development proposals that are consistent with the plan.

## 6.3 Conservation Districts

The support of local conservation district staff is essential for technical assistance, the development of farm and stewardship plans, education and outreach materials, best management practices and adaptive management strategies. Conservation districts may also be responsible for support with compliance, monitoring and implementation strategies in collaboration with the farm operator and county planning department.

## 6.4 Proprietary Information

When partnering with conservation districts and local farm operators to develop farm plans, it is advised that the county CAO address how confidential and proprietary information will be handled. Summary information may be collected regarding the type of agricultural activity and best management practices implemented to serve as the basis for the approval of the plan.

In most instances, farm conservation plans are not open to public inspection unless required by law or court of competent jurisdiction. Financial, commercial and proprietary information in farm plans are typically exempt from disclosure unless permission is obtained from the landowner. Disclosure of farm plans for agricultural operations including dairies, animal feeding operations and concentrated animal feeding operations are addressed in [RCW 42.56.270\(17\)](#), [RCW 42.56.610](#), and [RCW 90.64.190](#). Upon request, a 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.

# Chapter 7: Critical Areas Ordinance Relationship to Other Regulations

## 7.0 Relationship to other Regulations

Critical areas contain diverse ecology and habitat types, some of which are subject to more than one regulation. If such a conflict is found, the regulation which provides the most protection to the critical areas shall apply. Approval of a permit does not remove the applicant’s obligation to comply with the restrictions of the applicable local, state and federal regulations. Agricultural operations are subject to all applicable regulations within CAOs and other county, state and federal regulations relevant to the agricultural operation and its activities. These statutes and regulations may include the following:

[King County](#) clarifies that if a farm plan addresses property within shoreline jurisdiction, the farm plan must be consistent with the goals of the SMA and the policies of the county SMP. The plan must ensure that there is no net loss of shoreline ecological functions.

- Hydraulic Project Approval
- Livestock Management Ordinance
- WA State Dairy Nutrient Management Act
- WA Shoreline Management Act
- Water Pollution Control Act
- Water Quality Standards for Surface Water
- Water Quality Standards for Groundwater
- Endangered Species Act
- Federal Clean Water Act
- Federal Emergency Management Agency Laws
- National Flood Insurance Program

### 7.1 Agriculture and Shoreline Master Programs (SMP)

In 1971, the State Legislature passed the Washington Shoreline Management Act (SMA) ([RCW 90.58.065](#)), to plan for and foster all reasonable and appropriate use while preventing harm to the shoreline environments. The SMA requires cities and counties with “shorelines of the state” to prepare and adopt a Shoreline Master Program (SMP) based on the unique geographic, economic and ecological make-up of each jurisdiction.

The SMA was amended in 2002 to clarify that SMPs cannot modify or limit agricultural activities occurring on land where agricultural activities are conducted. If there are conflicts between

critical areas regulations and SMP policies, the SMP provisions prevail. New agricultural activities must comply with SMP requirements when land is being converted from another use to agriculture. Washington State Department of Ecology (Ecology) rules clarify that new development that doesn't meet the definition of "agricultural activity," such as building a new barn, must comply with the SMP standards. While many agricultural developments are exempt from permit requirements, they must comply with the standards.

After Ecology approves a comprehensively updated SMP, critical areas within shorelines of the state are protected by SMPs and are not subject to procedural or substantive requirements of the GMA. However, Ecology rules clarify that jurisdictions may rely on CAOs within shoreline jurisdiction provided they meet Ecology standards. Ecology's [Shoreline Master Program Handbook](#) describes options for local governments to incorporate relevant portions of CAOs into SMPs directly, or adopting critical area provisions by reference.

# Appendices

## Appendix A: Clallam County Risk Assessment Criteria

LOW RISK	MODERATE RISK	HIGH RISK <sup>1</sup>
<b>RIVERS, STREAMS, LAKES, &amp; MARINE WATERS (AHCA).</b> <b>Buffers are measured from Ordinary High Water Mark (OHWM).</b>		
<p>1(a). A year-round 50-foot or greater fully-vegetated buffer<sup>2</sup> is maintained with no livestock access.</p> <p>2(a) Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 50-foot buffer, and only during the growing season<sup>4</sup>.</p>	<p>1(b). A year-round 35-foot minimum well-vegetated buffer<sup>3</sup> is maintained with no livestock access.</p> <p>2(b) Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 35-foot buffer, and only during the growing season<sup>4</sup>.</p>	<p>1(c). Less than 35-foot wide well-vegetated buffer<sup>3</sup> is maintained or livestock have access to the buffer.</p> <p>2(c). Manure is not applied at rates based on crop nutrient needs, occurs within 35 feet of the OHWM, or is applied outside growing season<sup>4</sup>.</p>
<b>WETLANDS &amp; OTHER WATER FEATURES<sup>5</sup></b> <b>Buffers are measured from edge of wetland or water feature.</b>		
<p>3(a). A year-round 50-foot or greater fully-vegetated buffer<sup>2</sup> is maintained between wetlands/water features and livestock or cultivation.</p> <p>4(a) Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 50-foot buffer, and only during the growing season<sup>4</sup>.</p>	<p>3(b). A 35-foot minimum well-vegetated buffer<sup>3</sup> is maintained between wetlands/water features and livestock or cultivation, except as outlined in footnote 8.</p> <p>4(b) Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 35-foot buffer, and only during the growing season<sup>4</sup>.</p>	<p>3(c). Conditions specified in Criterion 3(b) are not met.</p> <p>4(c). Manure application occurs within the 35-foot buffer, manure is not applied at rates based on crop nutrient needs, or is applied outside the growing season<sup>4</sup>.</p>
<b>LIVESTOCK HEAVY USE AREAS<sup>6</sup></b>		
<p>5(a). Livestock heavy use area is located at least 200 feet from AHCAs, Wetlands or Water Features.</p> <p><b>AND</b></p> <p>There is a year-round, 50-foot or greater fully-vegetated buffer<sup>2</sup>.</p>	<p>5(b). Livestock heavy use area is located at least 100 feet from AHCAs, Wetlands or Water Features.</p> <p><b>AND</b></p> <p>There is a year-round, well-vegetated 50-foot buffer<sup>3</sup> upon any portion of the AHCA, Wetland or Water Feature that is within 200 feet of the heavy use area.</p>	<p>5(c). Livestock heavy use area is located less than 100 feet from AHCAs, Wetlands, or Water Features,</p> <p><b>OR</b></p> <p>There is less than a 50-foot year-round well-vegetated buffer<sup>3</sup> at all locations where (5)(b) requires the presence of such a buffer.</p>
<b>MANURE STORAGE<sup>7</sup></b>		
<p>6(a). Manure storage structure is covered with a roof or tarp and located at least 200 feet from AHCAs, Wetlands, or Water Features.</p> <p><b>AND</b></p> <p>There is a year-round, 50-foot or greater fully-vegetated buffer<sup>2</sup>.</p>	<p>6(b). Manure storage structure is covered with a roof or tarp and located at least 100 feet from AHCAs, Wetlands, or Water Features.</p> <p><b>AND</b></p> <p>There is a year-round, 50-foot well-vegetated buffer<sup>3</sup> upon any portion of the AHCA, Wetland or Water Feature within 200 feet of the manure storage structure.</p>	<p>6(c). Manure storage is covered but located less than 100 feet from AHCAs, Wetlands, or Water Features.</p> <p><b>OR</b></p> <p>Manure storage is uncovered but located less than 200 feet from AHCA, Wetlands, or Water Features.</p> <p><b>OR</b></p> <p>There is less than a 50-foot year-round well-vegetated buffer<sup>3</sup> at all locations where 6(b) requires the presence of such a buffer.</p>

Footnotes:

1. A Farm Plan will be required to address any of the six Risk Assessment Criteria that receive a rating of HIGH RISK.
2. A fully-vegetated buffer is generally comprised of 1/3 herbaceous (non-woody) outer area, and 2/3 inner area comprised of native trees, shrubs, and/or herbaceous vegetation. The inner area is closest to the AHCA, Wetland or Water Feature. The outer area shall achieve a total cover of 100% herbaceous vegetation (non-woody) within 3 years and the inner area shall achieve a total cover of 25% native trees or shrubs and a total cover of 100 % for all vegetation types within 5 years.
3. A well-vegetated buffer should be comprised of herbaceous (non-woody) in the outer area along with native trees, shrubs, and/or herbaceous vegetation in the inner area. The entire area shall achieve a total cover of approximately 75% herbaceous vegetation (non-woody) within 3 years and should also include native trees or shrubs.
4. Growing season is generally April through October.
5. Water Features include ponds, irrigation ditches, and drainage ditches that are hydrologically connected to AHCA or wetlands.
6. Heavy Use Areas includes areas where livestock are confined or congregate, such as feeding locations and wet season pasture areas (sacrifice areas) where polluted runoff may pose a risk to water quality. Does not apply to barns and sheds.
7. Manure Storage Includes collected liquid manure, solid manure, and bedding.
8. Buffer may be utilized for harvesting of forage, including grazing, when the water feature is dry if minimum forage height of 3 inches is maintained.

## Appendix B: King County Farm Plan Fact Sheet

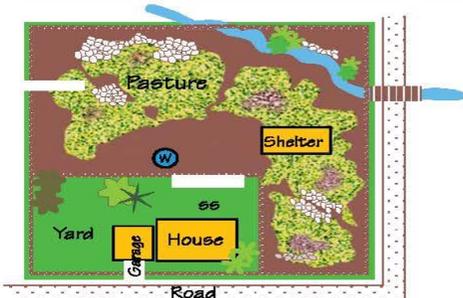


# FARM PLANNING OVERVIEW

A farm conservation plan is a document developed by your Conservation District and you, the farmer or land manager. It's a series of actions designed to meet a farmer's goals while protecting water quality and natural resources. Some of the things considered in a farm plan are farm size, soils type, slope of the land, proximity to water bodies, type of livestock or crops and finances available. The King Conservation District works with farms of all sizes, from backyard horse owners to dairy and crop operations!

*All services provided by the King Conservation District are free and without obligation. We are a non-regulatory, non-enforcement agency.*

## How it Works



Before Farm Plan

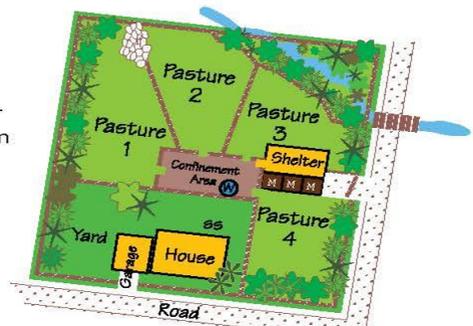
Planning starts with a site visit where a Conservation District farm planner listens to the farm goals and objectives and then walks the property with the manager to identify management challenges and natural resource concerns.

The planner then recommends possible actions such as rotational grazing, cover cropping, using manure as a fertilizer, targeted weed management, stream buffer planting and fencing, building a compost facility or establishing a heavy use paddock for livestock. The recommendations are reviewed by the farmer/ land manager and, with the help of a farm planner, a plan and schedule for actions is developed.

The final plan is a voluntary commitment. Once the farmer/land manager has decided on a course of action, a tentative implementation schedule is set and the farm plan is recorded. Revisions of the plan can be made as the goals and needs of the farm change.

In some cases, a farm plan can open the door to benefits such as financial assistance for projects, reduced farm development permit costs or eligibility for farm conservation tax reduction (PBRs). A farm plan may assist farmers in meeting the requirements of King County land management codes, including the Livestock Management Ordinance and the Critical Areas Ordinance.

If you would like help improving your stewardship of your farm, contact the Conservation District at 425-282-1900 and ask for farm planning assistance.



After Farm Plan

## Appendix 5.B

### Clallam County Risk Assessment Criteria

#### Clallam County Code

#### Chapter 27.12

(5) Existing, Ongoing Agriculture Risk Assessment Criteria.

(a) The success of farms and ranches in Clallam County depends in part on good quality soil, water, air and other natural resources. Agricultural activities that incorporate protection of the environment, including critical areas as defined by this chapter, are essential to achieving this goal. Agricultural activities are expected to be conducted in a manner that protects against harm or degradation to the existing functions and values of AHCA, wetlands, and their associated buffers.

(b) The Administrator shall utilize the low, moderate and high risk assessment criteria in Table 27.12.037(A) to evaluate existing, ongoing agriculture within and adjacent to AHCA and wetlands. Existing, ongoing agricultural activities may have different risk assessment ratings based on the six performance standards and four risk assessment categories – river and streams, water features (wetlands, ponds, and irrigation/drainage ditches); livestock heavy use areas; and manure storage – in Table 27.12.037(A).

(c) The risk assessment criteria in Table 27.12.037(A) address agricultural activities located within AHCA, wetlands, and their associated minimum standard buffers regulated under this chapter, and more intensive agricultural activities, i.e., manure storage, livestock heavy use, confinement areas, located within the 200-foot jurisdictional boundary of these critical areas. The risk assessment criteria in Table 27.12.037(A) also address nonregulated ponds and open irrigation/drainage ditches that are hydrologically connected to AHCA and wetlands, which may provide a means for pollution to cause harm and degradation to AHCA and wetlands.

(i) Low and Moderate Risk Agricultural Activities. Agricultural activities shall be deemed compliant with this section if they meet the low or moderate risk assessment criteria, unless it is determined by the Administrator that they are causing harm or degradation to the existing functions and values of AHCA or wetlands located on real property owned, leased, or occupied by the person or entity completing the worksheet. If this occurs for one of the six performance standards, then the agricultural operation is required to develop a farm conservation plan to address activities causing harm or degradation. The intent of the farm conservation plan is, at a minimum, to lower the risk assessment for the specific performance standards of concern. The farm conservation plan shall be submitted to the Administrator for review and approval.

(ii) High Risk Agricultural Activities. Agricultural activities that receive a high risk assessment rating on any of the six performance standards are required to submit a farm conservation plan to address the high risk activities. The intent of a farm conservation plan is, at a minimum, to lower the risk assessment from high to moderate. The farm conservation plan shall be submitted to the Administrator for review and approval.

(iii) Farm Conservation Plans. Farm conservation plans under this section shall consider the USDA Natural Resources Conservation Service (NRCS) “Field Office Technical Guide” (FOTG) that contains a nonexclusive list of conservation practices (best management practices) to lower the risk from existing, ongoing agriculture to existing functions and values of AHCA and wetlands. The Clallam Conservation District may be available to provide assistance in the development of a farm conservation plan.

(iv) Existing Plans. Those portions of land upon which farm owners or operators have implemented a dairy nutrient management plan, a resource management system plan, or a conservation reserve enhancement program plan consistent with conservation practices and management standards that meet the FOTG quality criteria for each natural resource (soil, water, animals, plants, and air) and approved by the Clallam Conservation District or USDA Natural Resources Conservation Service are entitled to a presumption of compliance with the “no harm or degradation” standards described in subsection (4) of this section. This would be contingent on these plans not resulting in any high risk agricultural activities on any of the six risk assessment performance standards.

**Table 27.12.037(A) Risk Assessment Criteria**

**(Ratings are based on lowest conditions)**

LOW RISK	MODERATE RISK	HIGH RISK <sup>1</sup>
<b>RIVERS, STREAMS, LAKES, &amp; MARINE WATERS (AHCA)</b> <b>Buffers are measured from ordinary high water mark (OHWM)</b>		
1(a). A year-round 50-foot or greater fully vegetated buffer <sup>2</sup> is maintained with no livestock access.  2(a). Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 50-foot buffer and only during the growing season <sup>4</sup> .	1(b). A year-round 35-foot minimum well vegetated buffer <sup>3</sup> is maintained with no livestock access.  2(b). Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 35-foot buffer and only during the growing season <sup>4</sup> .	1(c). Less than 35-foot wide well vegetated buffer <sup>3</sup> is maintained or livestock have access to the buffer.  2(c). Manure is not applied at rates based on crop nutrient needs, occurs within 35-feet of the OHWM, or is applied outside growing season <sup>4</sup> .
<b>WETLANDS &amp; OTHER WATER FEATURES<sup>5</sup></b> <b>Buffers are measured from edge of wetland or water feature</b>		
3(a). A year-round 50-foot or greater fully vegetated buffer <sup>2</sup> is maintained between wetlands/water features and livestock or cultivation.	3(b). A 35-foot minimum well vegetated buffer <sup>3</sup> is maintained between wetlands/water features and livestock or cultivation except as outlined in footnote 8.	3(c). Conditions specified in criterion 3(b) are not met.

**Table 27.12.037(A) Risk Assessment Criteria**

**(Ratings are based on lowest conditions)**

LOW RISK	MODERATE RISK	HIGH RISK <sup>1</sup>
<p>4(a). Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 50-foot buffer and only during growing season<sup>4</sup>.</p>	<p>4(b). Manure application at rates not exceeding the crop nutrient needs occurs only outside the minimum 35-foot buffer and only during the growing season<sup>4</sup>.</p>	<p>4(c). Manure application occurs within 35-foot buffer, manure is not applied at rates based on crop nutrient needs, or is applied outside the growing season<sup>4</sup>.</p>
<p><b>LIVESTOCK HEAVY USE AREAS<sup>6</sup></b></p>		
<p>5(a). Livestock heavy use area is located at least 200 feet from AHCA, wetlands or water features.</p> <p><b>AND</b></p> <p>There is a year-round, 50-foot or greater fully vegetated buffer<sup>2</sup>.</p>	<p>5(b). Livestock heavy use area is located at least 100 to 200 feet from AHCA, wetlands or water features.</p> <p><b>AND</b></p> <p>There is a year-round, well vegetated 50-foot buffer<sup>3</sup> upon any portion of the AHCA, wetland or water feature that is within 200 feet of the heavy use area.</p>	<p>5(c). Livestock heavy use area is located less than 100 feet from AHCA, wetlands, or water features.</p> <p><b>OR</b></p> <p>There is less than a 50-foot year-round well vegetated buffer<sup>3</sup> at all locations where 5(b) requires the presence of such a buffer.</p>
<p><b>MANURE STORAGE<sup>7</sup></b></p>		
<p>6(a). Manure storage structure is covered with a roof or tarp and located at least 200 feet from AHCA, wetlands, or water features.</p> <p><b>AND</b></p> <p>There is a year-round, 50-foot or greater fully vegetated buffer<sup>2</sup>.</p>	<p>6(b). Manure storage structure is covered with a roof or tarp and located at least 100 feet from AHCA, wetlands, or water features.</p> <p><b>AND</b></p> <p>There is a year-round, 50-foot well vegetated buffer<sup>3</sup> upon any portion of the AHCA, wetland or water feature within 200 feet of the manure storage structure.</p>	<p>6(c). Manure storage is covered but located less than 100 feet from AHCA, wetlands, or water features.</p> <p><b>OR</b></p> <p>Manure storage is uncovered but located less than 200 feet from AHCA, wetland or water feature.</p> <p><b>OR</b></p> <p>There is less than a 50-foot year-round well vegetated buffer<sup>3</sup> at all locations where</p>

**Table 27.12.037(A) Risk Assessment Criteria**

**(Ratings are based on lowest conditions)**

LOW RISK	MODERATE RISK	HIGH RISK <sup>1</sup>
		6(b) requires the presence of such a buffer.

Footnotes:

1. A farm plan will be required to address any of the six risk assessment criteria that receive a rating of "HIGH RISK."
2. A fully vegetated buffer is generally comprised of one-third herbaceous (non-woody) outer area, and two-thirds inner area comprised of native trees, shrubs, and/or herbaceous vegetation. The inner area is closest to the AHCA, wetland or water feature. The outer area shall achieve a total cover of 100 percent herbaceous vegetation (non-woody) within three years and the inner area shall achieve a total cover of 25 percent native trees or shrubs and a total cover of 100 percent for all vegetation types within five years.
3. A well vegetated buffer should be comprised of herbaceous vegetation (non-woody) in the outer area along with native trees, shrubs, and/or herbaceous vegetation in the inner area. The entire area shall achieve a total cover of approximately 75 percent herbaceous vegetation (non-woody) within three years and should also include native trees or shrubs.
4. Growing season is generally April through October.
5. Water features include ponds, irrigation ditches, and drainage ditches that are hydrologically connected to AHCA or wetlands.
6. Heavy use areas includes areas where livestock are confined or congregate, such as feeding locations and wet season pasture areas (sacrifice areas) where polluted runoff may pose a risk to water quality. Does not apply to barns and sheds.
7. Manure storage includes collected liquid manure, solid manure, and bedding.
8. Buffer may be utilized for harvesting of forage, including grazing, when the water feature is dry if minimum forage height of three inches is maintained.