



**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*

## 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).

## Table of Contents

Acknowledgements .....	1
Executive Summary .....	1
Chapter 1: Background .....	3
1.0 Legislative and Case Law History .....	3
1.1 Case Law History.....	3
1.2 Key Critical Areas Case Rulings: <i>Protect the Peninsula’s Future v. Growth Management Hearings Board and Clallam County</i> .....	5
1.3 Key Critical Areas Case Rulings: <i>Swinomish Indian Tribal Community &amp; the Washington Environmental Council v. Skagit County</i> .....	7
1.4 Ruckelshaus Center Study.....	8
1.5 Voluntary Stewardship Program .....	8
Chapter 2: Critical Areas Ordinance Review.....	11
2.0 Critical Area Ordinance Review: Twelve Washington State Counties .....	11
2.1 Common Critical Areas Ordinance Exemptions.....	12
2.2 Critical Areas Ordinance Definitions .....	13
2.3 “Ongoing and Existing Agriculture”: Description and Definition .....	13
2.4 “Agricultural Activities”: Description and Definition.....	14
2.5 “New Agriculture”: Description and Definition .....	15
2.6 Impact Ratings for Agricultural Activities.....	16
Chapter 3: The Five Critical Areas and Agricultural Regulations.....	17
3.0 The Five Critical Areas and Agriculture Regulations.....	17
3.1 Geologically Hazardous Areas .....	17
3.2 Wetlands.....	17
3.3 Fish and Wildlife Habitat Conservation Areas .....	20
3.4 Frequently Flooded Areas.....	21
3.5 Critical Aquifer Recharge Areas.....	23
Chapter 4: Critical Area Categories Related to Agriculture.....	24

4.0 Critical Area Categories Related to Agriculture .....	24
4.1 Nonconforming Uses, Structures and Preexisting Structures .....	24
4.2 Access Roads .....	25
4.3 Reconstruction and Remodeling .....	25
4.4 Maintenance and Repair .....	25
4.5 Fencing and Signage .....	26
4.6 Agricultural Chemicals .....	26
Chapter 5: Voluntary and Regulatory Approaches .....	27
5.0 Voluntary and Regulatory Approaches .....	27
5.1 Incentives, Funding, Education and Outreach .....	27
5.2 No Harm or Degradation Standard .....	28
5.3 Right to Farm .....	28
5.4 Monitoring, Adaptive Management & Performance Standards .....	28
5.5 Best Management Practices .....	29
5.6 Best Available Science .....	30
Chapter 6: Farm Conservation Plans .....	32
6.0 Farm Conservation Plans .....	32
6.1 Required Farm Plans .....	34
6.2 Voluntary Farm Plans .....	36
6.3 Conservation Districts .....	36
6.4 Proprietary Information .....	36
Chapter 7: Critical Areas Ordinance Relationship to Other Regulations .....	37
7.0 Relationship to other Regulations .....	37
7.1 Agriculture and Shoreline Master Programs (SMP) .....	37
Appendices .....	39
Appendix A: Clallam County Risk Assessment Criteria .....	39
Appendix B: King County Farm Plan Fact Sheet .....	41

## 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.	2006
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
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

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



Case Title	Subject Summary	Year
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.

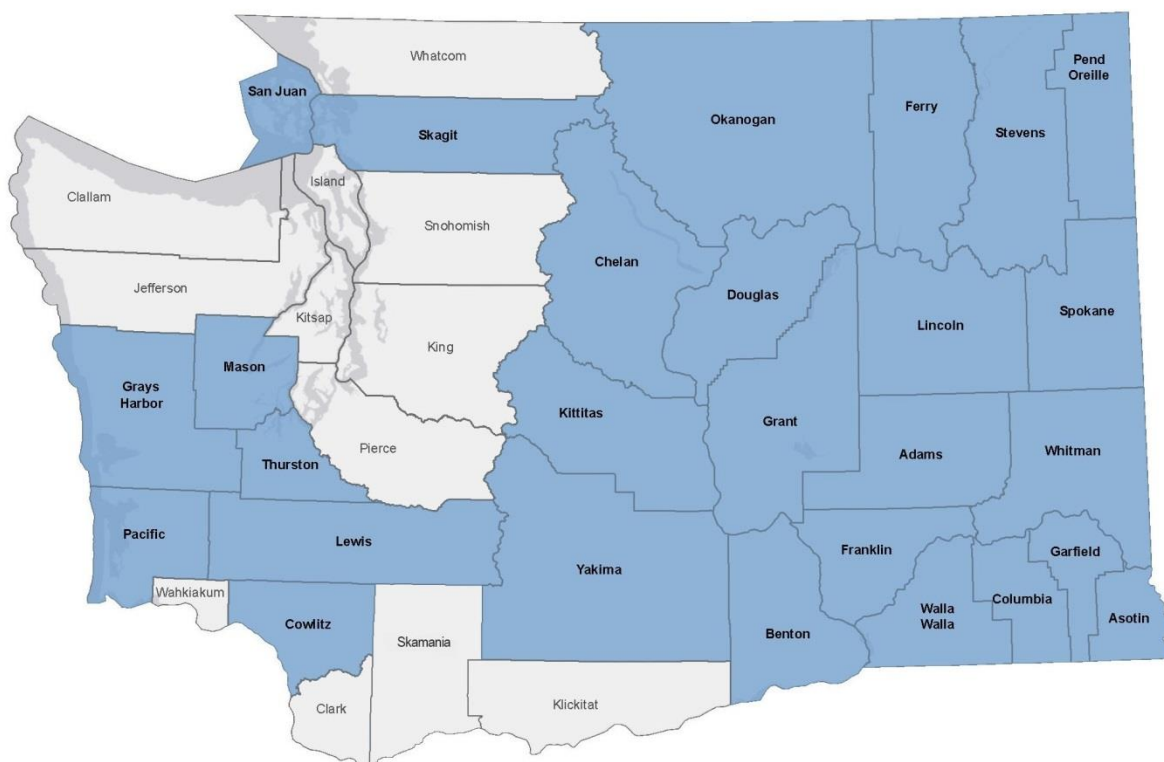
#### **1.4 Ruckelshaus Center Study**

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](#).

#### **1.5 Voluntary Stewardship Program**

The Voluntary Stewardship Program (VSP), [RCW 36.70A.705](#) provides counties with an alternative approach from traditional development regulations to protect and enhance critical areas where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture. The program promotes agriculture and environmental stewardship through a voluntary collaborative planning process with local agricultural operators. It builds on existing state and federal programs, which allows counties to leverage resources from previous work plans to successfully reach program goals.

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



\*Shaded counties are participating in the Voluntary Stewardship Program

The program is administered by the Washington State Conservation Commission with guidance from a statewide advisory committee. Twenty-seven counties in Washington have chosen to participate in the program (Figure 1). The Legislature appropriated funding for the Conservation Commission to administer and support counties in the development of incentive-based strategies and local guidelines for watershed stewardship. Watershed workgroups, comprised of farmers, tribes, and local environmental groups and agencies, will develop watershed workplans 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 workplan that is not approved, or the workplan'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 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 in the future. 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 Voluntary Stewardship program, 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.

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

#### **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.

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.

### **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 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.

**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.

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).



- 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 voluntary measures 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 most commonly the 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](#), [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 or 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>		
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.  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> .	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.  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> .	3(c). Conditions specified in Criterion 3(b) are not met.  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> .
<b>LIVESTOCK HEAVY USE AREAS<sup>6</sup></b>		
5(a). Livestock heavy use area is located at least 200 feet from AHCA's, Wetlands or Water Features. <b>AND</b> There is a year-round, 50-foot or greater fully-vegetated buffer <sup>2</sup> .	5(b). Livestock heavy use area is located at least 100 feet from AHCA's, Wetlands or Water Features. <b>AND</b> 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.	5(c). Livestock heavy use area is located less than 100 feet from AHCA's, Wetlands, or Water Features, <b>OR</b> 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.
<b>MANURE STORAGE<sup>7</sup></b>		
6(a). Manure storage structure is covered with a roof or tarp and located at least 200 feet from AHCA's, Wetlands, or Water Features. <b>AND</b> There is a year-round, 50-foot or greater fully-vegetated buffer <sup>2</sup> .	6(b). Manure storage structure is covered with a roof or tarp and located at least 100 feet from AHCA's, Wetlands, or Water Features. <b>AND</b> 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.	6(c). Manure storage is covered but located less than 100 feet from AHCA's, Wetlands, or Water Features. <b>OR</b> Manure storage is uncovered but located less than 200 feet from AHCA, Wetlands, or Water Features. <b>OR</b> 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.

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

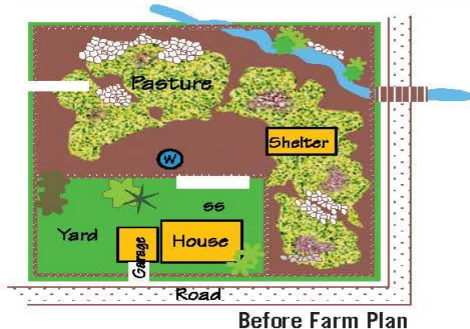


### FARM PLANNING OVERVIEW

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

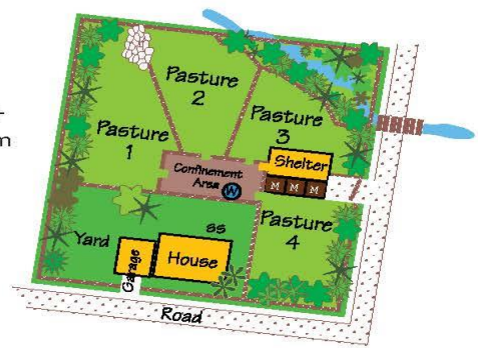
Planning starts with a site visit where a Conservation District farm planner listens to the farm goals and objectives and then walks the property with the manager to identify management challenges and natural resource concerns.

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

Distributed by King Conservation District • 1107 SW Grady Way, Suite 130 • Renton, WA 98057 • 425-282-1900 • [www.kingcd.org](http://www.kingcd.org)