

PROPOSED NEW SECTION TO CRITICAL AREAS CODE

27.12.037 CCC-Existing-and-Ongoing Agriculture Required Best Management Practices on Agricultural Lands.

(1) Purpose and Intent. The purpose of this Section is to address two mandates under the Growth Management Act (GMA): (a) to protect the existing functions and values in and adjacent to aquatic habitat conservation areas (AHCA) and wetlands, and (b) to conserve and protect agricultural lands, specifically those lands with existing and ongoing agricultural activities that are located within 200 feet of AHCA's and wetlands regulated under this Chapter.

(2) Applicability. As defined in CCC 27.12.900, existing and ongoing agricultural activities occurring on or within 200 feet of AHCA's and wetlands that do not currently comply with the protection standards (including standard buffers) of this Chapter are subject to the provisions of this Section. The alternate standards from the AHCA and wetland standards of this Chapter only applies to existing and ongoing agricultural activities related to cultivating crops and grazing livestock and the land preparation associated with those agricultural activities. Agricultural activities that do not meet the definition of existing and ongoing agriculture are required to comply with the other provisions of this Chapter, including but not limited to the applicable AHCA and wetland buffers and protection standards.

(3) No Harm or Degradation Standard.

(a) All existing and ongoing agriculture activities must be conducted so as not to cause harm or degradation to the existing functions and values of AHCA's and wetlands (the "no harm or degradation standard"). For the purposes of this Section, the phrase "no harm or degradation" means the following:

- (i) Meeting or improving documented water quality levels, if available, consistent with the State water pollution control laws.
- (ii) Meeting, or working towards meeting, the requirements of any total maximum daily load (TMDL) water quality improvement projects or requirements established by the Washington Department of Ecology (ECY) pursuant to Chapter 90.48 RCW.
- (iii) Meeting all applicable requirements of Chapter 77.55 RCW (Hydraulics Code) and Chapter 220-110 WAC (Hydraulics Code Rules).
- (iv) Meeting the specific protection measures for AHCA's or wetlands for existing and ongoing agriculture specified in Subsections (4) and (5) of this Section.
- (v) No evidence of significant degradation to AHCA's or wetlands regulated under this Chapter that can be directly attributed to adjacent existing and ongoing agricultural activities.

(b) The references above to Chapters 77.55 and 90.48 RCW and Chapters 173-201A and 220-110 WAC shall not be interpreted to replace the ECY and Washington Department of Fish and Wildlife (WDFW) authority to implement and enforce these State programs with County responsibility to do so, but rather are intended to provide County input and supplemental County involvement as needed to implement the County's GMA obligations under this Section.

(c) An owner or operator is responsible only for those conditions caused by agricultural activities conducted by the owner or operator and is not responsible for conditions that do not meet the requirements of this Subsection resulting from the actions of others or from natural conditions not related to the agricultural activities. In those situations where the County is presented with data showing a violation of a State water quality standard at a particular location, but where the County cannot identify any condition or practice existing or occurring at a particular agricultural operation that is causing the violation, the County shall refer the information regarding the State water quality violation to ECY and shall follow other procedures described in Subsection (8) of this Section. Conditions resulting from unusual weather events (such as a storm in excess of 25-year, 24-hour storm), or other exceptional circumstances that are not the product of obvious neglect are not the responsibility of the owner or operator, but shall be subject to the requirements for emergency actions described in CCC 27.12.035(2).

(4) Agricultural Best Management Practices (BMPs). Agricultural activities are expected to be conducted in a manner that protects against harm or degradation to the existing functions and values of fish and wildlife habitat in and adjacent to AHCA's and wetlands through the implementation of agricultural BMPs to address the performance and protection standards in Subsection 5 below. Agricultural landowners and operators are encouraged to design and implement BMPs through consultation with the following resources:

- (a) Section 4 of the USDA Natural Resources Conservation Service (NRCS) "Field Office Technical Guide" (FOTG) contains a nonexclusive list of conservation practices (BMPs) to guide implementation of the expectations of this section.
- (b) The Clallam Conservation District may be available to assist in the development of farm conservation plans or provide technical assistance.

(5) Performance and Protection Standards

- (a) Livestock and Dairy Management. Livestock and dairy operations must be conducted so as not to contribute any wastes of sediments into a natural or modified natural stream in violation of state water quality standards.
 - i. Livestock watering and access must be limited in AHCA's. Unrestricted access of livestock to streams regulated under this Chapter is prohibited. Compliance is demonstrated by fencing livestock access from streams, and limiting to one crossing to the extent possible. Where livestock exceeds one animal unit per one acre of grazable pasture adjacent to AHCA's, all livestock watering facilities and crossings in streams must be constructed consistent with applicable NRCS conservation practices.
 - ii. Livestock pasture and areas of livestock confinement and concentration such as corrals, paddocks, exercise areas, heavy use areas, and watering facilities within 200-feet of AHCA's must be managed so as to maintain vegetative coverage or to provide vegetated buffer strips sufficient to avoid contributing sediments and pollutants to a AHCA in violation of State water pollution control laws.

This includes the following NRCS Conservation Practices as adopted or as later amended:

- The installation of diversion terrace to avoid upgradient stormwater runoff from entering concentrated livestock confinement areas consistent with NRCS Conversion Practice 362 (adopted February 2013).

- Retention and/or planting of riparian vegetation strips consistent with NRCS Conservation Practice 391 (adopted October 2014);
 - Installation of filter strips consistent with NRCS Conservation Practice 393 (adopted December 2014);
 - Prescribed grazing consistent with NRCS Conservation Practice 528 (adopted February 2013);
 - Water facilities consistent with NRCS Conservation Practice 614 (adopted February 2015);
 - Other applicable NRCS Conservation Practices
- iii. Manure Collection, Storage and Use. Any livestock confinement or concentration of livestock areas (exceeding one animal unit per acre) that is located upgradient from a AHCA should have manure and soiled bedding from stalls from these areas removed within 3 days and placed in a storage facility protected from rainfall so that runoff does not carry pollutants and bacteria to AHCA's.

(b) Nutrient and Farm Chemical Management.

- i. The owner or operator must not place manure in a stream or in a location where such wastes are likely to be carried into a stream by any means. Spreading of manure within 50 feet of AHCA's, and spreading of liquid manure on bare ground, is prohibited from October 31st to March 1st, unless otherwise permitted pursuant to:
- A. An approved dairy nutrient management plan, if applicable, as prescribed by Chapter 90.64 RCW; or
 - B. A farm conservation plan prepared or approved by the Clallam Conservation District, and approved by Clallam County for consistency with this Section.
- ii. Agricultural operators shall apply crop nutrients (both organic and inorganic) at agronomic rates recommended for that particular crop and only during the growing season.
- iii. Farm chemicals (i.e. pesticides, insecticides, herbicides, etc.) shall only be applied consistent with all requirements stated on the chemical container labels and all applicable Federal and State laws and regulations, such as Chapter 15.58 RCW (Pesticide Control Act), Chapter 17.21 RCW (Pesticide Application Act), and 7 USC 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act).

(c) Soil Erosion and Sediment Control Management.

- i. Roads used for existing and ongoing agricultural activities must be designed and maintained such that road surfaces, fill, and associated structures are constructed and maintained to avoid contributing sediment to AHCA's and wetlands.
- ii. Agricultural equipment operation must not cause stream bank sloughing or other failure due to operation too close to the top of the bank.

(d) Operation and Maintenance of Agricultural Drainage Infrastructure. The following BMPs apply to any watercourse that is part of drainage infrastructure associated with existing and ongoing agriculture:

- i. Dredging or removal of accumulated sediments in any watercourse that is part of agricultural drainage infrastructure should be conducted when there is no or minimal water flow (generally between June 15th and October 31st) in the watercourse being maintained to minimize potential for distributing sediments to salmonid-bearing waters.
 - ii. Excavation spoils must be placed so as not to cause bank failures and so drainage from such spoils does not contribute sediment to streams.
 - iii. Mowing or cutting of vegetation located within a watercourse may be conducted at any time; provided, that any cutting or mowing is above the ground surface within the channel and in a manner that does not disturb the soil or sediments; and provided, that the cut vegetation does not block water flow. Watercourse bank vegetation shall be preserved or allowed to reestablish as soon as practicable after drainage construction and maintenance are completed to stabilize earthen ditch banks.
- (e) Riparian Management. Existing riparian and wetland vegetation, especially native vegetation, should be retained to continue to provide soil and streambank stability, shade, filtration, and habitat for fish and wildlife. Landowners are encouraged to plant and restore vegetation adjacent to AHCA's and wetlands to improve fish and wildlife habitat by providing shade, cover, filtration of pollutants, organic debris, and control of noxious weeds. Funding may be available through Clallam Conservation District for riparian forest buffer restoration (i.e. Conservation Reserve Enhancement Program (CREP)).
- (f) Grazed Wet Meadows. Existing and on-going agricultural activities that occur within grazed wet meadows converted prior to June 16, 1992 shall comply with the above agricultural BMPs of this Section to the maximum extent practicable.
- (6) Custom Farm Conservation Plan Option. To demonstrate compliance and/or vary from any protection standards above, an owner or operator may elect to prepare and submit a Custom Farm Conservation Plan to Clallam County Department of Community Development (DCD) for review and approval. The farm conservation plan shall include the following: name of owner; parcel numbers, number of acres in agriculture; description of the agricultural operation; length of time the property has been in continual agriculture (no lapse greater than 5 years); number and type of animals being raised; location of fences to limit livestock access from AHCA's; types of crops being raised; general fertilizer (i.e. manure or commercial fertilizers), type and extent of existing vegetation, especially native vegetation; pesticides, insecticides, and herbicides being utilized; a site map showing the agricultural activities, access roads, and buffer and riparian areas in and adjacent to AHCA's and wetlands; existing fence locations; and proposed BMPs to protect the functions and values of AHCA's and wetlands. The site plan should focus on the areas within 200 feet of AHCA's and wetlands regulated under this Chapter. Technical assistance for preparation of farm conservation plans may be available from Clallam Conservation District.
- (7) Recognition for Agricultural Owners and Operators Who Have Implemented Extra AHCA Protection Measures. This Subsection intends to recognize the extra AHCA's and wetland protection measures for existing and ongoing agriculture taken by landowners or farm operators who have implemented an dairy nutrient management plan (DNMP), resource management system plan (RMS plan), or Conservation Reserve Enhancement Program (CREP) from the Clallam Conservation District or NRCS.
- (a) Those portions of land upon which owners or operators have implemented an approved DNMP or an RMS plan consistent with the conservation practices and management standards that meet the FOTG quality criteria for each natural resource (soil, water,

animals, plants, and air) are entitled to a presumption of compliance with the “no harm or degradation” standards described in Subsection (3) of this Section. The RMS or DNMP must include within the planning unit any AHCA’s or wetlands on the property, as well as all upland areas within the owner’s control that could potentially adversely impact the watercourse and/or associated fish habitat.

- (b) Such presumption of compliance may be rebutted and enforcement commenced as described in Subsection (8) below if the County obtains credible evidence that the agricultural operation is not meeting the no harm or degradation standards of Subsection (3) of this Section. To be entitled to this presumption, the owner or operator shall provide the County with documented evidence of implementation of those elements of the approved plan that are relevant to the resource impact at issue.

(8) Compliance. Landowners and operators conducting existing and ongoing agriculture activities subject to this Chapter are expected to meet the performance and protection standards of this Section through voluntary compliance. It is the policy of the County to emphasize compliance by education, prevention, and voluntary compliance as a first step. The County will utilize the following methods for achieving compliance with the performance and protection standards of this Section:

- (a) Clallam County, the Clallam Conservation District, and the Department of Ecology work cooperatively to identify potential water quality violations of agricultural origin and to provide assistance to agricultural owners and operators for preventing or correcting water quality violations pursuant to a 1998 Memorandum of Understanding, as amended. The Department of Ecology maintains ultimate compliance authority for enforcing state water quality standards.
- (b) Where applicable and also funding allows, the County will apply the Pollution Identification & Correction Plan for the Sequim Bay-Dungeness Watershed Clean Water District (December 2014 or as later amended), to address agricultural pollution prevention, monitoring, and correction.
- (c) While voluntary compliance is a desirable, compliance with this Section is subject to CCC 27.12.055, Enforcement, and Title 20 CCC, Code Compliance, as appropriate.

(9) Baseline Conditions and Monitoring and Adaptive Management. The implementation of the intent of this Section shall be subject to establish baseline conditions, to establish monitoring indicators, and to utilize adaptive management.

- (a) Existing Baseline Functions and Values. The County will use the following to establish the baseline of existing functions and values for AHCA’s and wetlands:
 - i. Streamkeepers Biological Integrity Scale (B-IBI) stream rating system dated December 2011.
 - ii. Washington State Department of Ecology Water Quality Assessment 305 Report dated December 2012.
 - iii. Washington State Department of Ecology 303(d) dated December 21, 2012.
 - iv. Clallam County Shoreline Inventory and Characterization Report for Portions of Clallam County Draining to the Strait of Juan de Fuca, March 2012.
 - v. Revised Draft WRIA 20 Inventory and Characterization Report, May 2012.
- (b) Monitoring Indicators. The County will use the following indicators to monitor trends in the baseline:

- i. Stream reach classification changes based on the Streamkeepers Biological Integrity Scale (B-IBI) stream rating system of Healthy; Compromised; Impaired' Highly Impaired' and Critically Impaired.
 - ii. Change in stream reach or AHCA water quality documented by Streamkeepers of Clallam County.
 - iii. Removal or addition of a stream reach or AHCA from the Washington State Department of Ecology's 303 (d) list.
 - iv. Change in stream reach or AHCA water quality documented in the WA State Department of Ecology's Washington State Water Quality Assessment 305 Report
 - v. Actions identified in the Pollution Identification and Correction (PIC) Plan for the Sequim Bay- Dungeness Watershed Clean Water District.
 - vi. A downgrade to the Wetland Classification of wetlands adjacent to or hydrologically connected to existing and ongoing agricultural activities.
 - vii. *Other Data Sources - Reserved*
- (c) Adaptive Management. The Administrator will review the above monitoring indicators to determine trends in the baseline functions and values in sub-part (a) above. If there is a downward trend, the Administrator will assess whether existing and ongoing agriculture activities subject to this Section are likely contributing to this downward trend and, if so, implement the following steps:
- i. Contact landowners of existing and ongoing agriculture and provide information to make them aware of the issue of concern (e.g., monitoring results).
 - ii. If the baseline functions and values are not improved in subsequent monitoring results, the Administrator, will seek to determine whether there is an identifiable cause to the problem through site visits, consultations with other agencies, or other means of investigating the cause.
 - iii. If there is an identifiable issue related to existing and ongoing agriculture, the Administrator will seek compliance under sub-part 8 of this Section.
 - iv. If the agricultural operations regulated under CCC 27.12.037 are utilizing the Best Management Practices outline in the Section but that the functions and values of the AHCA and wetlands still degrade, this may necessitate a revision to the required Best Management Practices or the enactment of other protective measures in this Section to address the problem.