# VOLUNTARY STEWARDSHIP PROGRAM

# STATEWIDE ADVISORY COMMITTEE AND CONSERVATION COMMISSION

# POLICY ADVISORY #06-21

# *THE VOLUNTARY STEWARDSHIP PROGRAM AND “NEW” AGRICULTURAL ACTIVITIES*

## APRIL 2021

## Purpose

### The purpose of this advisory is to clarify the application of the Voluntary Stewardship Program (VSP) to “new” agricultural activities.

## Clarification of the application of VSP to “new” agricultural activities

The VSP uses the Shoreline Management Act (SMA) definition for “Agricultural activities.”[[1]](#footnote-2)

**RCW** [90.58.065](http://app.leg.wa.gov/RCW/default.aspx?cite=90.58.065)

**Application of guidelines and master programs to agricultural activities.**

(1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW [90.58.080](http://app.leg.wa.gov/RCW/default.aspx?cite=90.58.080) shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the current[[2]](#footnote-3) exception to the definition of substantial development in RCW [90.58.030](http://app.leg.wa.gov/RCW/default.aspx?cite=90.58.030)(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means 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;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agriculture activities are conducted.

(3) The department and local governments shall assure that local shoreline master programs use definitions consistent with the definitions in this section.

“New” agricultural activities are

* Activities that have not be conducted before, and
* On land not previously used for agriculture.

“New” agricultural activities are not

* Existing and ongoing agricultural activities on agriculture land,
* Changes in agricultural activities on agriculture land,
* Changes from one agricultural activity to another on agricultural land.

For VSP counties, agricultural activities identified by in the county’s opt-in VSP ordinance as participating watersheds fall under VSP and the work plan created by the watershed work group and approved by the VSP Technical Panel. Any agricultural activities in watersheds not identified by the county ordinance as participating watersheds are covered by the county CAO.

VSP agricultural activities in shoreline areas are subject to local Shoreline Master Programs, regardless of if those agricultural activities are existing, ongoing or new, as defined in the SMA.

## Practical application of the definition of agricultural activities in VSP

* VSP applies to all landowners with agricultural activities with respect to the CAO only, regardless of whether an individual landowner participates in VSP or not.
* Other development regulations, such as building permits, would still apply to all landowners in addition to regulatory backstops (e.g. the Clean Water Act, the Endangered Species Act, etc.).
* A proponent of a project involving “new” agriculture as defined herein, should consult the county planning department. The County GMA CAO should be applied to new agricultural activities. After installation, the agricultural activities are considered existing and ongoing agricultural activities on agriculture land, and VSP would apply.
* Each county, watershed work group, and VSP technical service provider should conduct outreach and education to agricultural producers on
	+ What is considered “new” and existing agriculture and the applicability of VSP and the VSP work plan in their county,
	+ How voluntary practices can assist in protecting critical areas while maintaining agricultural viability, and
	+ How to participate in VSP.

## Examples

For purposes of the following examples:

* The examples below apply to VSP counties.
* Agricultural activity is defined as per the VSP statute - RCW 36.70A.703 (1)
* An agricultural structure is a structure that is an agricultural activity as defined in the VSP statute.[[3]](#footnote-4)
* All local, state and federal development regulations apply.[[4]](#footnote-5)
* Where the VSP work plan applies, the county CAO does not.
* Any change in agricultural activities or the installation of a “new” agricultural activities should be considered by the county watershed work group in their adaptive management of their work plan.

Below, the following three scenarios are outlined in more detail:

Example #1: On existing agricultural land, a different or alternate agricultural activity (crop change) is intended.

Example #2: On existing agricultural land, a different or alternate agricultural activity (improved shed) is intended.

Example #3: On existing agricultural land, a different or alternate agricultural activity (change in shed use) is intended.

Example #4: On land not previously or currently used for agriculture, a “new” agricultural activity (construction of shed) in intended.

Example #1: On land currently used for agriculture, a different or alternate agricultural activity is intended.

Narrative: A landowner has land presently in agriculture and now wishes to engage in a different or alternate agricultural activity, which in this case, means switching crops from berries to corn.

Result: The county VSP work plan would apply to the different or alternative agriculture activity, and therefore, the county CAO would *not* apply. Because the CAO does not apply, even though the county CAO required a 50’ buffer, the landowner would not have to establish that buffer. The landowner *could* put the different or alternate crop anywhere on the portion of that land that meets the definition of agricultural activity. All local, state and federal development regulations apply.See Figure 1, below, and the agricultural activities decision tree.

Figure 1.

Land currently use for agriculture

Stream



Berries replaced with corn

CAO 50’ buffer would not be required

Example #2: On land currently used for agriculture, a different or alternate agricultural activity is intended.

Narrative: A landowner has land presently in agriculture and now wishes to engage in a different or alternate agricultural activity, which in this case, means maintaining, repairing, and replacing an agricultural facility or structure. For example, improving a hay shed.

Result: The county VSP work plan would apply to the different or alternative agriculture activity or structure, and therefore, the county CAO would *not* apply. Because the CAO does not apply, even though the county CAO required a 50’ buffer, the landowner would not have to establish that buffer. The landowner *could* put the structure anywhere on the portion of that land that meets the definition of agricultural activity. All local, state and federal development regulations apply. See Figure 2, below, and the agricultural activities decision tree.

Figure 2.

Land currently used for agriculture

Stream

Improved hay shed

CAO 50’ buffer would not be required

Example #3: On land currently used for agriculture, a different or alternate agricultural activity is intended.

Narrative: A landowner has land presently in agriculture and now wishes to engage in a different or alternate agricultural activity, which in this case, means using an existing structure not previously used for an agricultural activity for an agricultural activity. For example, using an existing structure to store hay. The pre-existing structure, on land currently used for agriculture, was not previously nor is it currently used for agriculture. As part of the change in agricultural activity, the pre-existing structure will become an agricultural structure. The existing structure was built before the CAO went into effect and is partly within the critical area buffer; it is thus considered “nonconforming” under the CAO

Result: The change in use of the structure would be considered an agricultural activity covered by the county VSP work plan, and therefore the county CAO would *not* apply. All local, state and federal development regulations apply. See Figure 3, below, and the agricultural activities decision tree.

Figure 3.

Land currently used for agriculture

Stream

*Shed now used to store hay*

CAO 50’ buffer would not be required

Scenario #4: On land not previously or currently used for agriculture, a “new” agricultural activity (construction of shed) in intended.

Narrative: A landowner wishes to install a “new” agricultural activity on non-agricultural land. For example, constructing a fruit storage structure. Before and during installation, the “new” agricultural activity that occurs on land not previously used for agriculture invokes the county CAO, and is *not* governed by the VSP county work plan.

Result: The county CAO would apply to the *initial* installation and construction, and in virtually every case, the agricultural structure will not be allowed within a critical area or its buffer. The construction of such a structure would have to abide by the county CAO. If the county CAO required a 50’ buffer, the landowner would most likely have to establish that buffer.[[5]](#footnote-6) All local, state and federal development regulations apply. See Figure 4, below, and the agricultural activities decision tree.

Figure 4.

Land not used for agriculture

*Stream*

*New fruit storage shed*

CAO requires a 50’ buffer

1. See [RCW 36.70A.703(1)](http://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.703) and [RCW 90.58.065 (2) (a)](http://app.leg.wa.gov/RCW/default.aspx?cite=90.58.065) [↑](#footnote-ref-2)
2. Reviser's note: "Current" first appears in chapter 298, Laws of 2002. [↑](#footnote-ref-3)
3. County planning departments should consider their county code regarding agricultural structure size, intended use, and intensity of that use when considering impacts to critical area functions and values and agricultural viability. [↑](#footnote-ref-4)
4. See RCW 36.70A.030, RCW 36.70A.700, RCW 36.70A.702 (5) and RCW 36.70A.710 (1) ( a) [↑](#footnote-ref-5)
5. Note: Once the installation is complete (to include installation of the structure and any other requirements associated with installation, such as mitigation, if necessary), the agricultural structure becomes an on-going and existing agricultural activity, as long as the footprint of the agricultural activity is not expanded. At that point, the county VSP work plan and not the county CAO would apply to subsequent agricultural activities within that same footprint. Any subsequent expansion to the footprint of agricultural activity into lands not previously or currently used for agriculture would be treated as a separate conversion, and so the CAO would again apply to that conversion. [↑](#footnote-ref-6)