

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF UPDATING ISLAND )  
COUNTY’S GMA COMPREHENSIVE ) ORDINANCE C-150-05  
PLAN AND CRITICAL AREA ) PLG-021-05  
REGULATIONS RELATING TO EXISTING )  
AND ONGOING AGRICULTURE )  
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**WHEREAS**, Agriculture activities are an integral part of the rural character of Island County and it has been the County’s policy to encourage and support agricultural activities wherever they occur in the County regardless of either the zoning classification in which the farming is conducted or the size of the farm; and

**WHEREAS**, the County is required by the GMA to update its Critical Area Regulations and this Ordinance constitutes the County’s update of its regulations for existing and on-going agriculture; and

**WHEREAS**, the County is required to address the Western Washington Growth Management Hearings Board Compliance Order dated November 17, 2000 and this Ordinance addresses this Compliance Order; and

**WHEREAS**, the Island County Board of Commissioners convened an 18 member Agricultural Review Committee to advise the County on actions it believes are appropriate relating to existing and ongoing agriculture; and

**WHEREAS**, after receiving the recommendations of the Agricultural Review Committee, the County conducted workshops and the Planning Commission conducted public hearings on changes to the County Comprehensive Plan and Development Regulations that would implement certain recommendations of the Committee; and

**WHEREAS**, at a public meeting, the Planning Commission considered the testimony received at the Public Hearings and documents contained in the County’s Record and adopted recommendations for amending both the Comprehensive Plan and Development Regulations found in Chapters 17.02 and 17.03 ICC; and

**WHEREAS**, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to the Comprehensive Plan and Chapters 17.02 and 17.03 ICC attached hereto as Exhibits A and B are not likely to have significant adverse impacts that were not considered in the environmental documents prepared for the Comprehensive Plan and Development Regulations, **NOW, THEREFORE,**

**IT IS HEREBY ORDAINED** that the Board of Island County Commissioners hereby adopts amendments to the Comprehensive Plan recommended by the Planning Commission attached hereto as Exhibit A; the amendments to Chapters 17.02 and 17.03 ICC attached hereto as Exhibit B; the Planning Commission’s Findings attached hereto as Exhibit C; and the Standard Farm Management Plan attached hereto as Exhibit D. Material stricken through is deleted and material underlined is added.

**BE IT FURTHER ORDAINED** that Ordinance C-151-99 which established Agricultural Best Management Practices shall be repealed and this ordinance shall take effect ninety (90) days after either a determination by the Western Washington Growth Management Hearings Board that Ordinance C-150-05 complies with Chapter 36.70A RCW or, should the Growth Board’s decision be appealed, a final court decision that Ordinance C-150-05 complies with Chapter 36.70A RCW, the Growth Management Act.

This ordinance compiles and replaces the earlier version of Ordinance C-150-05, PLG-021-05, adopted on April 24, 2006 as well as Exhibit C Background Findings adopted on May 8, 2006.

APPROVED AND ADOPTED this \_\_ day of May, 2006.

BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

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Wm. L. McDowell, Chairman

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William J. Byrd, Member

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Mike Shelton, Member

ATTEST:

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Elaine Marlow  
Clerk of the Board

APPROVED AS TO FORM:

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David L. Jamieson, Jr.  
Deputy Prosecuting Attorney  
& Island County Code Reviser

## EXHIBIT A

### PROPOSED REVISIONS TO THE COUNTY COMPREHENSIVE PLAN

#### I. OVERVIEW

##### *ISLAND COUNTY VISION STATEMENT – Page 12*

Farming plays a very important role in Island County, even though many farms are small in scale. Large or small, throughout both islands, all farms in Island County, including tree farms, have unique value by contributing to the County’s rural character.

Though it is hard to describe in words, “rural character” is a crucial element of the County’s economy and culture -- and one of the few things virtually all residents agree is essential to the quality of life here. Rural character not only makes people “feel good” about the place where they live and provides a cultural connection to the County’s past -- it also has a very clear dollars-and-cents benefit. Rural character (which would not exist without the County’s farms and forests) is the basis for the County’s important tourist industry. It is also a magnet for retirees and their dollars, as well as for businesses that consider locating here to provide a higher quality of life for their employees.

For all these reasons, it is important as a matter of policy for the County to help keep farmers here farming, including those on limited acreage, especially in the face of growing pressures for residential and commercial development. Tax incentives, extension programs and “Right-to-Farm” measures help. So too does a regulatory approach that protects the environment as mandated by the State’s Growth Management Act, but does so in fair, science-based ways that are as flexible as the law allows, and that give farmers as much say as possible in the management of their lands.

Under zoning standards only farmland in the ag tax program is classified by the County as “commercial”. However, both commercial and noncommercial farming play an important role in preserving the rural character of Island County. Commercial farming can be either of long-term or local commercial significance to County residents. Noncommercial farming, including raising of livestock, continues to be a wide spread activity of local importance in the rural area of the County, providing a cultural connection to both the historic past and future of Island County.

~~Farmers and foresters continue to make a living on their land, supported by land-use policies, innovative growing and marketing techniques, processing infrastructure, and protective ordinances. The amount of land devoted to forestry and farming has increased over the last 20 years, in part, because of County programs which help large scale commercial farming remain profitable and through the support of specialized small scale farming throughout the rural area.~~

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## MAJOR ISSUES

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### *Resource Lands – Page 46*

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#### Agriculture in the Rural Zone

The Rural zone is the predominant zoning category in Island County, comprising approximately 60% of the County's total land area. Most of the County's farming activity occurs in the Rural zone. Albeit typically small scale and noncommercial in nature, farming in the Rural zone has and will continue to play a significant role in the cultural heritage of the County.

Livestock farming in the Rural zone ranges from a single animal raised as a 4-H project to the maintenance of livestock operations. Horticulture farming in the Rural zone can be for self-sufficiency; growing of organic produce sold at local farmers markets; or cultivation of specialty crops.

Rural zone farm land and activities do not meet the County's criteria for commercial designations. However, these lands are crucial to the future viability of designated commercial agriculture in Island County. Many of these parcels are leased by commercial farmers to support their farming activities. Others provide a much needed buffer for these designated lands from more intense rural development. All of these smaller farming activities add substantially to the economic base of Island County as mainstays of the County's "rural character" which in turn is a key magnet for the tourist and retiree dollars and for much needed new business.

While some Rural zone farming activities change in nature and scale with the evolving interests of the property owner, many have been maintained by a particular owner or family for many years. Deep attachments develop to the land and to the County's agricultural heritage. These attachments are important elements of the County's culture. Therefore, it is just as important for the County to recognize and protect the important contribution of these Rural zone farming activities to the rural character of Island County as it is to recognize and conserve lands of long term or local commercial significance.

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#### IV. GOALS AND POLICIES

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##### *Environmental Quality*

###### Goal:

Safeguard the natural environment as an integrated system where the land, water and air resources interact creating a balanced environment for all life on the islands.

###### Policies:

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- H. Ensure that regulations to protect the environment are fair, flexible and scientifically based.
- I. For agricultural activities, to protect environmental quality, utilize management practices that are tailored to the level and intensity of the agricultural activity and meet the requirements of the Growth Management Act.

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#### V. IMPLEMENTATION STRATEGIES

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##### *H. Environmental Quality – Pages 157 – 158*

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1. Island County will work with other governmental agencies to encourage the establishment of effective air pollution control standards.
2. Island County will include the use of energy and water conserving technology in its building standards.
3. Island County will conduct watershed-scale planning and cumulative impact analysis to assist in conservation of water resources.
4. For existing agricultural activities, Island County will develop and apply site specific measures to protect environmental quality that constitute best available science and are fair, flexible and tailored to the level and intensity of the agricultural practices and meet the requirements of the Growth Management Act.
5. Island County will develop a water quality monitoring program to help identify adverse impacts of land activities on critical areas.

## EXHIBIT B

### 17.02.030 DEFINITIONS

~~Agricultural/Farm Use~~ **Agriculture:** The current employment of land for the primary purpose of raising, harvesting and/or selling crops or the feeding, breeding, management and/or sale of, or the production of, livestock, poultry, fish, fur-bearing animals or honeybees or for dairying and/or the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. ~~Farm use~~ Agriculture includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. ~~Farm use~~ Agriculture also includes the growing of ornamental shrubs, Christmas trees, pulpwood and similar nursery stock.

**Agricultural Activities, Existing and On-Going:** Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. These activities include the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an on-going operation. An operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five (5) years, on or after October 1, 1998 unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and on-going agricultural activity. Forest practices, residential landscaping and residential agriculture are not included in this definition.

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**Animal Unit:** One animal unit equals 1000 lbs of livestock, according to NRCS nutrient management conversion standards for livestock species.

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**Farm Management Plan, Custom:** A custom plan is site specific and is developed for a specific property owner/operator. A custom plan provides a farm management system that implement NRCS BMPs. The County requires a custom plan for Medium Intensity Agriculture. Conservation Districts as well as Island County, consultants, property owners and, with the consent of an owner, lessees are all eligible to prepare farm plans if the preparer is certified by NRCS and the document is determined by the County to meet NRCS standards.

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**Farm Management Plan, Standard:** A standard plan implements NRCS BMPs for Low Intensity Agriculture. A standard plan is prepared and adopted by the County. There are two types of standard plans. The first type applies BMPs to protect Critical Areas and is used, on a county-wide basis, by Low Intensity Agriculture. The second type applies BMPs to protect

Critical Areas for Low Intensity Agriculture located in the following drainage basins with salmon bearing streams or potential salmon bearing streams: Maxwelton, Glendale, Onamac and Triangle Drainage Basins.

**Farmed Wet Meadows:** Shall mean those Category B wetlands whose vegetative cover has been sufficiently modified in the past as a result of grazing, seeding, cutting for hay or other agricultural practices, such that they are dominated by a pasture species (such as blue grass, orchard grass, fescue, clovers, reed canary grass, etc.) and invasive wetland species indicative of continuous disturbance. They often are saturated or have standing water during the wet season and part of the growing season but are often dry during the summer months.

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**High Intensity Agriculture:** Shall mean existing and on-going agriculture including dairies, animal feeding operations and concentrated animal feeding operations as those terms are used in federal and state regulations and livestock operations with an Animal Unit density greater than three (3) per acre.

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**Low Intensity Agriculture:** Shall mean existing and on-going agriculture including livestock management with an Animal Unit density of less than one (1) per acre; seasonal hay mowing and related activities and horticulture involving one (1) acre or less of cultivated land. For livestock, the amount of acreage shall be determined by the amount of grazed or mowed acreage where manure or compost made from manure is applied.

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**Medium Intensity Agriculture:** Shall mean existing and on-going agriculture including livestock operations with an Animal Unit density of one (1) but not greater than three (3) per acre and all horticultural operations larger than one (1) acre of cultivated land.

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**NRCS BMPS:** Shall mean the current adopted and recommended farm management practices of the Natural Resource Conservation Service.

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**Record of Decision:** The section of a Custom Farm Management Plan that is signed by the property owner and sets forth the specific NRCS BMPs the owner has committed to implement.

### 17.02.040 CRITICAL AREAS

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E. **Exemptions.** The following activities or critical areas are exempt from the provisions of this section, ICC 17.02.050.A, 17.02.050.C and 17.02.060, where restoration of a disturbed critical area or its buffer requires planting, native species shall be used:

1. ~~Existing and on-going agricultural activities when undertaken pursuant to best management practices to minimize impacts to critical areas. For example, by minimizing the use of motorized vehicles and machinery in such areas.~~

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13. Existing Residential Landscaping and Agriculture. Planting, irrigating, fertilizing, spraying, mowing and pruning and maintenance and repair of yard or garden structures when such activities are part of existing normal residential landscaping activities and no building permit is required. Residential agriculture includes uses that are considered Accessory Uses under Chapter 17.03 ICC. Accessory Uses must be incidental to or secondary to a single family dwelling. Examples of Residential Agriculture include vegetable/flower gardens or orchards normally associated with a rural home and animal husbandry involving less than one (1) Animal Unit per two and one-half (2.5) acres. This exemption does not allow further intrusion into a wetland, fish and wildlife habitat conservation area, geologically hazardous area or their buffers.

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**K. Existing and On-going Agricultural Activities.** Existing and On-going Agricultural Activities may continue in Critical Areas and Critical Area buffers, as follows.

1. Low Intensity Agriculture shall protect Critical Areas through the implementation of a Standard Farm Management Plan or, if the owner or lessee elects, a Custom Farm Management Plan.
2. Medium Intensity Agriculture shall protect Critical Areas through the implementation of a Custom Farm Management Plan.
3. High Intensity Agriculture shall protect Critical Areas through compliance with federal and state regulations for dairies, animal feeding operations and concentrated animal feeding operations when applicable or through implementation of a Custom Farm Management Plan.
4. A Standard Farm Management Plan shall be prepared by the Director and approved by the Board of Commissioners as a Type IV decision under Chapter 16.19 ICC.

5. A Custom Farm Management Plan shall be prepared for a property by the owner, lessee or a farm planning consultant if they have received training and are certified by the NRCS or prepared by the Whidbey or Snohomish Conservation Districts or Island County. The Custom Plan shall apply NRCS BMPs to protect Critical Areas affected by Existing and On-going Agricultural Activities. The Record of Decision contained in the Plan prepared by an owner, lessee, the County or farm planning consultant shall be processed by the County as a Type I decision pursuant to Chapter 16.19 ICC.
6. To the fullest extent possible, the County and Conservation Districts shall rely on farm plans (that apply NRCS BMPs) approved by State or Federal agencies to satisfy the requirements of this section relating to Standard and Custom Farm Management Plans.
7. Existing permanent improvements that were lawfully erected or constructed on or before October 1, 1998, shall not be required to be modified to comply with the requirements of this Chapter pertaining to Existing and On-Going Agricultural activities, unless such modification is required by ICC 17.03.230. Permanent improvements shall include such features as buildings, structures, bridges, drainage facilities, farm ponds, road, driveway, and laneways. Examples of features that are not permanent improvements include fences, filter strips, confinement areas, nutrient storage areas, watering troughs, and pasture locations.
8. Previously approved Farm Management Plans and/or lawfully erected, installed or constructed Best Management Practices, located on Commercial Agriculture and Rural Agriculture lands in order to comply with the requirements of Ordinance C-151-99, shall not be required to be modified to comply with updated BMPs adopted through the enactment of Ordinance PLG-021-05; unless such modification is required by ICC 17.03.230. This shall include fencing that was installed, stream crossing that were constructed, filter strips established, nutrient management systems implemented, barns erected, etc

#### **17.02.050 OVERLAY ZONES**

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#### **D. Penalties and Enforcement**

Any violation of 17.02.040 and 17.02.050 shall be enforced by the Planning Director and shall be subject to the enforcement provisions of Chapter 17.03 ICC. The County recognizes that Existing and On-going Agricultural Activities may have to be modified to comply with the County's Critical Area regulations. The goal of the County is to achieve

prompt compliance through the voluntary actions of property owners. Enforcement actions needed to secure compliance shall be proportionate to the impact the Existing and On-going Agricultural Activities have on Critical Areas.

1. Six months after the effective date of Ordinance C-150-05, all property owners who are conducting Agriculture shall complete and return to the County a questionnaire that establishes when the farming activity was commenced; the location, scope and extent of the farming activity; and whether the farming activity is classified as Low, Medium or High Intensity. Property owners who fail to meet this deadline will be required to comply with the requirements of this Chapter applicable to new uses.
2. After the effective date of Ordinance C-150-05:
  - a) If applicable, a farmer or property owner shall:
    - (i) Within eighteen (18) months prepare or have prepared a Custom Plan; and
    - (ii) Within three (3) years implement all actions required by a Custom Plan; or
    - (iii) Within two (2) years implement BMPs described in a Standard Plan; and
  - b) Conservation Districts that receive financial support from the County shall be required to report to the County on the approval and implementation of Custom Plans prepared by the Districts. The County shall make these status reports available to the public periodically on a schedule that coincides with the compliance deadlines established by this section.
3. In addition to the remedies provided for in Chapter 17.03 ICC, a farmer or property owner who continues to fail to prepare a Custom Plan; or fails to maintain BMPs described in a Standard Farm Management Plan or a Record of Decision shall be required to comply with all the Critical Area regulations of Chapter 17.02 ICC.
4. When monitoring, required by this Chapter, shows an exceedence in adopted water quality standards that is damaging Critical Areas and is attributable to Existing and On-going Agricultural Activities, the Planning Director shall promptly order that the specific activities identified as contributing to the exceedence in water quality standards be modified or terminated.

### 17.03.260 Penalties and Enforcement

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I. **Restoration.** For property which contains a Category A or Category B wetland, deep-water habitat, or a fish and wildlife conservation area or their buffers which has been disturbed, or a steep slope or geologically hazardous area on which a structure has been built or located in violation of this Chapter, or when a Critical Area has been altered by agricultural activity in violation of this Chapter or Chapter 17.02 ICC, no permit or approval or development of the property shall be authorized or granted for a period of up to three (3) years from completion of restoration as determined by the Island County Planning Director. Provided that this section shall not apply to an owner who demonstrates by notarized affidavit that he/she is an innocent purchaser for value and had no actual or constructive notice of the violation. In the event of intentional or knowing violation of this Chapter, the County may bring an action against the owner or the land or the operator who committed the violation.

1. Restoration Plan

- a) ~~Where any wetland, deep water habitat or fish and wildlife conservation area or their buffers has been disturbed or a structure has been built or constructed on a steep slope or geologically hazardous area in violation of this Chapter,~~ When restoration is required the applicant shall cause to be prepared, by a qualified biologist, plan ecologist, geologist or similarly qualified professional, as appropriate, a restoration plan which shall include as a minimum the following:
- (i) The extent of disturbance including an inventory of all vegetation cleared; and
  - (ii) Measures necessary to restore the wetland, habitat or their buffers, or the slope, including removal of fill, regarding to original contours, if necessary, replacement of excavated material, revegetation of all cleared areas with native trees and/or plants and removal of structures; and
  - (iii) A schedule for restoration; and
  - (iv) A monitoring plan to evaluate periodically the success of the restoration and provide for amendments to the plan which may become necessary to achieve its purpose.

- b) In preparing and approving the restoration plan, the applicant and the County, ~~respectively~~ should consult with the Department of Fish and Wildlife, the Department of Natural Resources, the Natural Resource Conservation Service ~~and~~ or the Department of Ecology.
  - c) The restoration plan shall be prepared at the applicant's cost and shall be approved by the Hearing Examiner. The Hearing Examiner may approve, reject or approve the plan with conditions. All restoration shall be consistent with the approved restoration plan.
2. Restoration Monitoring. ~~In a wetland, deep water habitat, a fish and wildlife conservation area, their buffers, or a steep slope or geologically hazardous area w~~  
Where restoration has been required, the applicant, at its own cost, shall provide for seasonal monitoring of the site by a qualified biologist or other qualified professional, for a period of three (3) years after completion. The applicant shall submit an annual report to the Planning Director which discusses: a) the condition of introduced or reintroduced plant species; b) the condition of open water areas or other water features; c) use of the site by fish and wildlife species; d) any disturbances or alterations and their affects on the restoration; e) additional or corrective measures which should be taken to ensure the success of the restoration; and f) other information which the Planning Director considers necessary to assess the status of the restoration.
3. Restoration bond. ~~Prior to commencing restoration of a wetland, deep water habitat, or fish and wildlife conservation area or their buffers, or a steep slope or geologically hazardous area,~~ the applicant shall post with the Hearing Examiner a bond or other security in an amount sufficient to cover the cost of conformance with the conditions of the restoration plan, including corrective work necessary to provide adequate drainage, stabilize and restore disturbed areas, and remove sources of hazard associated with work which is not completed. After the Hearing Examiner determines that restoration has been completed in compliance with approved plans and the monitoring period has expired, the bond or other security shall be released. The County may collect against the bond when work which is not completed is found to be in violation of the conditions set forth in the restoration plan and/or the Hearing Examiner determines that the site is in violation of the purposes of this Chapter.

## EXHIBIT C

### BACKGROUND FINDINGS

1. Ordinance C-150-05 constitutes both the County's update of its GMA Critical Area regulations relating to Existing and On-Going Agriculture and its compliance action to address the Court of Appeals decision in *WEAN v Island County*, 122Wn. App. 156, (2004) and the Compliance Order issued by the Western Washington Growth Management Hearings Board on November 17, 2000 in Case No. 98-2-0023c.
2. All farming activity in Island County plays a very important role by sustaining the County's Rural Character. These activities occur in all land use classifications. It has been County policy to encourage, not discourage, small farm activities wherever they occur. In Island County grazing by livestock occurs in pastures that may be wet part of the year. Some of these pastures probably retain some wetland characteristics and could be classified as Category B wetlands. In turn, some grazing and horticultural activities may intrude into Category A wetland buffers and buffers the County established for streams.
3. Generally speaking, a use which lawfully existed prior to the enactment of a zoning ordinance or resolution, and which is maintained after the effective date of the ordinance or resolution, is commonly referred to as a "legal non-conforming use." In the past, as long as the activity was not changed significantly, the County has allowed these legal non-conforming uses to continue, even though they did not now comply fully with new use restrictions. In Washington, rarely are persons conducting non-conforming uses required to terminate or even modify activities that were permitted by prior zoning ordinances.
4. Historically the County has treated existing agricultural uses the same as other existing uses. In 2000, to provide some increased environmental protection to wetlands and streams, the County adopted Best Management Practices (BMPs) to govern existing agricultural uses. It did so recognizing that, generally under the Federal Clean Water Act these existing and on-going farming practices were exempt from Federal wetlands regulation. These BMPs were adopted through the enactment of Ordinance C-151-99.
5. Ordinance C-151-99 was supported as a compromise by farmers and all groups or organizations that participated in the County's public review process – except WEAN. WEAN did not believe it provided sufficient protection to Critical Areas.
6. After considering WEAN's objections, the Western Washington Growth Management Hearings Board ruled that the County's 2000 BMPs complied with the GMA requirements to protect Critical Areas but decided that BMPs could only be used by existing agricultural activities located in the CA and RA zones. Under the Board's

- November 17, 2000 Order all agricultural activities located outside the CA and RA zones must comply with the County's Critical Area regulations.
7. The County appealed the November 2000 Order to Superior Court. The Superior Court reversed the Western Board. WEAN appealed to the Court of Appeals and the Court of Appeals upheld the Western Board's decision. Therefore, the County is now required to comply with the Court of Appeal's decision.
  8. One of the concerns expressed by the Western Board and the Court of Appeals' sole basis for its decision was that the County's record for Ordinance C-151-99 did not have information on farming activity located outside the CA and RA zones. In 2005, the County has completed a detailed survey of existing Rural agriculture.
  9. The County's 2005 Summary Report concludes that agricultural activities being conducted outside the CA and RA zones occur throughout the County. The spatial distribution is random and depends on individual choices of property owners. The County identified slightly less than 1,900 parcels with agricultural activity constituting approximately 14,000 acres or 14% of the land area in the R, RA & RF zones. The County's study shows that the average rural farm is about 7 acres in size. Livestock density is less than one animal per two acres. Only thirty-eight farms have more than one animal unit per acre.

## **PUBLIC REVIEW PROCESS**

1. The Board received the Planning Commission's recommendations on Ag BMPs at a special meeting on December 20, 2005. At the meeting, the Board received a report and letter from Planning Commission Chair Bill Massey (R-8520). Several other Planning Commission members also expressed their thoughts and concerns regarding the Commission's recommendations. *See* Special Session Minutes R-8627 and R-8527, 8528, 8529 and 8530).
2. At the Special Meeting, the Board also viewed a video prepared by the Cooperative Extension Service on farming in Island County (R-8502).
3. The development regulation relating to existing and ongoing agriculture recommended by the Planning Commission became known as Ordinance C-150-05 (R-8584).
4. The Board conducted a public hearing on C-150-05 on January 23, 2006 in Oak Harbor and continued the hearing until February 27, 2006, at which time more testimony was received by the Board. Minutes for both hearings are included as R-8638 and R-8665.

5. The Board continued the hearing again at the conclusion of the February 27, 2006 hearing to April 3, 2006. The reason for the continuance was because the SEPA determination on C-150-05 had been appealed to the Island County Hearing Examiner. However, the public record on C-150-05 was closed.
6. On April 3, 2006, the Board heard testimony on seven amendments to C-150-05 (R-8669). After public testimony was completed, the Board considered and approved the seven amendments with some changes recommended by Staff. The Board then closed the public record but again continued the hearing until April 24, 2006, to consider a new amendment request from the Department of Ecology. *See* Minutes, R- 8709 and discussion below.
7. On April 24, 2006, the Board heard testimony on two amendments to the Standard Farm Plan and then adopted the amendments and took final action on C-150-06.

#### **STATE AGENCY REVIEW**

1. Sixty-day State Agency review of the County's proposed revisions to Ag BMPs was initiated on 10/18/05. *See* R-8388. On November 14, 2005, the County received the consolidated comments of State agencies by letter from Leonard Bauer, CTED (R-8468).
2. The County again requested State Agency comment in March, 2006 on the amendments to ordinance C-150-05. Comments were received on March 31, 2006 from CTED and DFW. On April 1, 2006, the County also received comments via email from the Department of Ecology. *See* R-8679 and 8704. The Board finds that C-150-05 as amended, addresses all suggestions offered by State Agency.
3. The Board further finds, based on the review of State Agencies, that the use of NRCS BMPs through the Standard and Custom Plans called for by Ordinance C-150-05 represents Best Available Science. On August 30, 2005 the Department transmitted its best available science evaluation of NRCS BMPs to the Planning Commission. R-8290. Using the standards set forth in Chapter 365-196 WAC the evaluation considered literature published by the State Department of Community, Trade and Economic Development, the Department of Ecology, the Department of Fish and Wildlife, the Washington State Conservation Commission, and an evaluation conducted by King County. The review also considered prior decisions of the Western Washington Growth Management Hearings Board and communication with the State Resource Conservationist for NRCS in Washington State. The conclusion of the evaluation was that there is no information that would indicate that something other than the NRCS BMPs constitutes the best available science for farming practices.

4. The Department's evaluation was forwarded to the Washington State Department of Community, Trade and Economic Development for their evaluation. On November 14, 2005 CTED, and DFW provided a response to the County's review which concluded that the NRCS BMPs have been developed using a sound scientific process that is consistent with best available science. R- 8468.

## **PUBLIC HEALTH DEPARTMENT REVIEW**

1. Island County Public Health completed two reviews relating to existing agriculture and BMPs. The first review examined agricultural use and Critical Aquifer Recharge Areas and the second reviewed past studies and existing data related to nitrates and groundwater. The Health Department concluded that “. . . both agricultural land uses and other land uses such as residential use can and do contribute to groundwater contamination. Proper management of agricultural nutrients, wastes and chemicals are essential for prevention of serious groundwater contamination problems.” *See* R-8499.
2. The Department recommended that the County utilize NRCS BMPs coupled with an “adaptive management approach” to trigger additional groundwater protection measures, concluding that the County's existing long term groundwater monitoring network will be sufficient to provide early warning. Again, *see* R-8499.
3. The Department reviewed maps prepared by the Planning Department showing existing Ag activities and Groundwater Susceptibility Areas before making its recommendations. *See* R-8508. The Department's review is further documented in a PowerPoint presentation which was given to the Planning Commission and then subsequently to the Board of Commissioners at open public meetings on 11/22/05 and 2/6/06 respectively. *See* R- 8710.
4. The Department was also asked to review NRCS BMPs specifically to determine whether these BMPs, if implemented, would provide protection to groundwater. At the January 23, 2006 public hearing, the Department provided the Board its conclusion that “. . . the use of the NRCS BMPs in concert with Custom and Standard Farm Plans represents our best opportunity to improve surface and groundwater quality . . .” *See* R-8592.
5. The Board finds, based on review and guidance received from the County Health Department, that NRCS BMPs represent best available science relating to protection of groundwater from impacts attributable to existing and ongoing agriculture. Further, the Board finds, based on the opinion of the County Health Department, that the use of NRCS BMPs by existing and ongoing agricultural activities will improve groundwater quality.

## **PUBLIC WORKS DEPARTMENT REVIEW**

1. The Island County Public Works Department reviewed both past Basin planning reports and NRCS BMPs. This review focused on identified surface water quality issues that have been attributed to agricultural practices and on NRCS BMPs. Public Works reported in October, 2005 on the water quality indicators that can be produced by poor farming practices. *See* R-8389. The Departments concluded that only one of 22 sites with water quality indicators pointed definitely to agriculture as a likely pollution source and that the source was addressed by DOE and the County through an enforcement action.
2. Public Works concluded after its review of NRCS BMPs that they can be considered BAS for surface water when the BMPs are combined with water quality monitoring and adaptive management. *See* R- 8476. The Board therefore finds, based on review and guidance received from the County Public Works Department, that NRCS BMPs represent best available science relating to protection of surface water from impacts attributable to existing and ongoing agriculture.

## **CONSERVATION DISTRICTS**

1. County property owners are served by two conservation districts -- Snohomish for Camano Island and Whidbey for Whidbey Island. Both Districts have a long-standing working relationship with both large and small Island County farmers. Both advise property owners on the use of NRCS BMPs and both have staff that have been trained and certified by NRCS to perform these advisory activities. The services by both Districts are performed without charge to a property owner.
2. Both Districts prepare conservation plans tailored to specific farm operations. These plans meet specific guidelines and standards established by NRCS. An example conservation plan is included in the County's Record as R-8190.
3. Both Districts participated throughout the County's public review process for the compliance and update relating to existing and ongoing agriculture. The Districts have reported to the Planning Commission, the Board of Commissioners and the public regarding agency activities and recommendations. *See* R-8056 and R-8201.
4. The County also received written testimony from the State Conservation Commission and NRCS staffperson, Steve Nissley. *See* R-8226. The State Conservation Commission, NRCS and both Conservation Districts consider NRCS BMPs to represent the best application of science that is available.
5. Because the Districts believe it is vital to retain a "trust-based" working relationship with local farmers, neither agency has been willing to disclose to the County the farm plans

that have been prepared by either District. However, WEAN made a public disclosure request to the Whidbey Island Conservation District in the Fall of 2005 for all of these plans. In the Winter of 2006, WEAN made the same request of the Snohomish Conservation District. The Whidbey Island Conservation District has advised the County and the State Legislature that this disclosure request resulted in property owners terminating all ongoing planning activity with the District.

6. Because the Conservation Commission and conservation districts across the State believe strongly in maintaining confidentiality, an amendment to the Public Disclosure Act was considered and approved by the 2006 Legislature. Based on this legislation, SB 6617, the Whidbey and Snohomish Districts requested an amendment to the Planning Commissions recommended legislation to remove the requirement that the County receive and approve Farm Plans. Amendment No. 7 was enacted by the Board to comply with SB 6617. *See* R-8703 for the District's request.

## **STANDARD FARM MANAGEMENT PLAN**

1. Ordinance C-150-05 requires adherence to the NRCS Best Management Practices. The manner in which the ordinance is implemented depends partially upon the level of agricultural intensity. Low intensity agricultural activities are required to adhere to a Standard Farm Management Plan (a.k.a. the Standard Checklist). The Board finds that while it is appropriate to require custom farm management plans for more intense agricultural activities, a standardized checklist is more appropriate for low intensity agricultural activities.
2. The County, with assistance from the Whidbey Island Conservation District (WICD) and the Snohomish Conservation District (SCD), developed the Standard Checklist. Both conservation districts provided staff with expertise in the on the ground application of NRCS Best Management Practices. WICD provided the assistance of one certified farm planner while the SCD provided the services of two certified farm planners. County staff coordinated the development of a Standard Checklist that reflected the thoughts and opinions of the certified farm planners. WICD, SCD and County staff met on an ongoing basis to discuss essential NRCS derived information and practices that needed to be included in a checklist that was focused on low intensity agricultural activities. According to NRCS and the Conservation Districts, NRCS practices are typically developed for large scale agriculture and can be overkill for a small scale operation. It is therefore appropriate to employ conservation practices that are adapted for low intensity activities but that also implement the intent of the NRCS practices.
3. The Conservation Districts directed the County's attention to a guide that had already been developed by the King Conservation District. The formal title to the guide is "Tips on Land and Water Management for Small Farm and Livestock Owners in Western Washington." It is more commonly referred to as the "Tips Guide." *See* R- 8505.

Assistance in developing the Tips Guide was provided by NRCS, among others. The Tips Guide describes farming practices relevant to Western Washington on subjects such as pasture management, manure management, fencing, weed control, enhancing riparian habitat, enhancing wildlife habitat, as well as a variety of other matters. The Tips Guide is derived from NRCS Best Management Practices and is in wide distribution in King and Pierce counties. While the guide is widely distributed, King and Pierce counties do not require adherence to the Tips Guide nor do they require adherence to a standard checklist that is focused on proper farming practices for low intensity activities.

4. The Standard Checklist was developed using the Tips Guide as a foundation which contains the majority of management practices applicable to low intensity operations. The Checklist will be mailed to every agricultural land owner in Island County – a list that includes all owners of land zoned CA or RA and all lands identified as having an agricultural activity in the County’s 2005 agricultural lands study. The Checklist asks a series of questions about the agricultural activity which, depending upon the answer, leads the landowner to pages within the Tips Guide or specific supplemental practices set forth at the end of the Checklist. The Tips Guide and the supplemental conservation practices provide the landowner with information and minimum requirements that must be adhered to if their Ag practices meet the low intensity definition.
5. Upon completion of the initial draft of the Checklist the Department forwarded it to the State Departments of Ecology and Fish and Wildlife for feedback. Both Departments provided comment on the Checklist. DOE provided a substantive comment pertaining to vegetated filter strips which necessitated the Board continue the public hearing until April 24, 2006. DOE suggested that where a vegetated filter strip exceeds a slope of 8% that the filter strip distances denoted in the conservation practices may need to be increased. Upon further consultation, DOE and the County concurred that the conservation practice should be modified to require consultation with the Conservation District or a certified farm planner if it is determined that a vegetated filter strip exceeds a slope of 8%. With this amendment, and others that were less substantive, DOE and DFW have indicated that the principles and requirements established in the Standard Checklist are appropriate critical area controls for low intensity agricultural activities that are located near wetlands and streams.
6. There have been several common themes conveyed during testimony received at the public hearings before the Board. One of those themes is that farmers rely upon the resources present on their property and that it would be counterproductive to damage those resources. That it is in their interest to be good stewards and to respect and protect the water, air, and soil resources present on their land. Many participants said that “if we need to do something different to be good stewards tell us what to do and we will do it...” This common theme caused the Board to believe that BMPs called for by a Standard Checklist will be implemented by the low intensity agricultural landowners voluntarily. The Board finds that mailing the checklist along with a questionnaire to all

landowners that are conducting an agricultural activity will go a long way towards ensuring the success of this program. Requiring the questionnaire to be filled out and returned will allow the county to improve its understanding of the extent of agriculture and the level of intensity of agriculture. It will also allow the County to focus education and outreach efforts, as well as compliance assessments.

7. The Board finds that it is appropriate to require low intensity agricultural activities to adhere to NRCS BMPs. The Board recognizes the balance needed to create a regulatory program that ensures adequate environmental protection while respecting the private property rights of landowners. Education and outreach efforts can have far more positive impact than enforcement actions. It is well accepted in Island County that education and outreach foster a positive relationship while overreaching government intrusion breeds discontent and resentment. The Board finds that the Standard Checklist is the appropriate method to compliance with Ag BMPs for low intensity agriculture.
8. Landowners understand that a failure to implement good farming practices called for by the Standard Checklist will mean they must comply with critical area regulations. Where water quality monitoring reveals a degraded condition in a specific watershed, compliance assessments will be conducted that include evaluating whether or not low intensity agricultural activities have properly implemented the BMPs. The Board finds this to be an appropriate approach to aid in prioritizing the level of compliance monitoring that is being conducted within each watershed.

## **SURVEY OF AGRICULTURAL ACTIVITIES IN THE RURAL AREA**

1. In 1998 the Board adopted designation criteria for Commercial Agriculture and Rural Agriculture zones. The CA zone represents a GMA defined resource land of long term commercial significance. The RA zone represents a county defined resource land of local importance. Application of the designation criteria resulted in approximately 6,000 acres zoned as CA and 4,000 acres zoned as RA or a total of about 10,000 acres. The designation criteria that were established include a requirement that the land be enrolled in the open agriculture tax program, that the land contain a minimum percentage of prime agricultural soils and that the land meet a minimum acreage requirement. For land to be enrolled in the open agriculture tax program the landowner must demonstrate to the Island County Assessor specific minimum income requirements. As a result, it was the Board's finding in 1998 that these lands were most likely to have some commercial viability. Parcels with agricultural activity that did not meet the designation criteria were not zoned CA or RA and were instead left in one of the rural area zoning designations.
2. Testimony received during public hearings has included information pertaining to the decline of commercial farming in Island County. Of particular note has been the decline of dairy farms. There remains one active dairy operation in Island County. The United States Department of Agriculture conducts a census of agriculture in each county every

- five years. A census was performed in 1997 and 2002. R- 8305. The census states that the number of commercial farms have decreased over this five year span by 11%, the acreage in farming has decreased by 23%, the average size of a farm has decreased by 14%, the total market value of production is down by 15%, the average market value of production is down by 5% per farm, government payments are up by 52% countywide, and that on average government payments to individual farms is up by 188%.
3. Census profiles have been developed for all other counties as well. Data from Whatcom County shows that the number of acres in farms has risen by 30% between 1997 and 2002, that the average size of a farm is up by 47%, that market value of production is up 15% countywide, and that market value of production per farm is up by 30%. R-8306. Thurston County data shows an increase in farm acreage of 12%, an increase in average farm size up 33%, and that there is an increase of market value of production per farm is up by 8%. R-8307. The census also provides a detail of the economic characteristics of farming in each county. In Island County there are a total of 348 farms identified that have an average net cash farm income of operation per farm of minus (\$4,263). In contrast, in Whatcom County the 1,485 farms identified have an average net cash farm income of operation per farm of \$55,675, in Thurston County it is \$13,755, in Kitsap County it is \$5,805, in Lewis County it is \$17,204, and in Jefferson County it is \$5,881. R-8274, R-8273, R-8272. Of the 39 counties in Washington State, Island County ranks 33<sup>rd</sup> in total value of agricultural products sold.
  4. In an effort to quantify and locate agricultural activity within the rural areas of Island County the Department initiated a survey of those lands zoned Rural, Rural Forest and Rural Residential during the months of June through September of 2005. There is no existing property database that contains this type of information. While the Assessor's database does contain information regarding tax status, those properties that are in the agricultural tax program are, in all likelihood, already zoned Commercial Agriculture or Rural Agriculture. Given that there was no ready data source the Department decided to conduct a windshield survey.
  5. The first step in conducting the windshield survey was to isolate geographic areas where agriculture was likely to exist. This was done by evaluating aerial photographs and satellite imagery. Visual observation of the DNR aerials yielded an approximate preliminary figure of 12,919 acres of pasture/farm land. Evaluation of the satellite imagery yielded an approximate preliminary figure of 24,736 acres of pasture/farm land. Maps were developed that depicted non-forested areas based on these two data sources. While there are some agricultural activities located within forested areas it was determined that it was likely a relatively small percentage. The Department was also able to rely upon some of the agricultural questionnaires that had been mailed out in the preceding months and returned with some general information. Once the maps were developed teams of two staff members drove every public road in the county as well as some private roads. Staff made observations regarding the type of agriculture that

appeared to be occurring, the quantity and type of livestock, the type of horticulture and any notes that could be made regarding the presence of critical areas. The data collected in the field was compiled in a database that could be mapped in GIS. This methodology is described in the Summary Report titled “Agricultural Uses in the R, RF, RR Zones” dated September, 2005. R-8327.

6. The database that was developed enabled the Department to quantify the geographic extent of agriculture in the rural areas as well as the amount and intensity. The maps that were produced as a result of the windshield survey reveal that rural agriculture is spatially random and located everywhere in the County. These Maps are included in the County’s Record at R-8508. There are approximately 80,000 acres zoned Rural (60% of the County), 14,000 acres zoned Rural Forest (10%) and 9,000 acres zoned Rural Residential (7% of the County). The total area of the rural area is 103,000 acres or 77% of the entire land area of the county. The windshield survey found that there were approximately 1,881 parcels or 14,000 acres within the rural area with some kind of existing agricultural activity occurring on an average parcel size of about 7 acres. Of the 1,881 parcels the data showed that about 832 (44%) of these parcels had livestock on site. It is assumed that the survey underestimates the actual amount of agriculture in the rural areas. Several factors lead to this conclusion. Staff viewed the property on a single day and only for a short period of time. In order for data to be collected staff had to see the animals which means that the animals had to be outside. It also means that staff had to have a clear view that was not blocked by trees, topography, structures, etc. Staff also did not drive down many private driveways and roads since they are private property and was therefore unable to physically see lands that might be in agricultural use.
7. The Snohomish Conservation District conducted its own livestock survey on Camano Island in 2003. R-8394. The SCD survey identified 132 livestock activities on Camano Island in 2003 while the county survey identified 143 in 2005 – a difference of 9 activities. The SCD also attempted to quantify the type and quantity of livestock at each site. The SCD and County surveys were very similar. SCD provided their information on a watershed level because the SCD did not want to disclose property-specific information. The SCD information shows the number of horses, cows, pigs, chickens, etc. within each watershed. The SCD survey focused on both large farms and small farms which resulted in tallies ranging from hundreds of alpacas within a watershed to a single chicken in another watershed. The County survey followed a similar protocol.
8. Livestock information that was gathered during the study was used to help characterize the intensity of rural area farming operations. Of the 1,881 parcels surveyed data was collected on 271 parcels that identified the type of animals observed and the quantity. The Washington State University Cooperative Extension, NRCS and the Conservation Districts concur that the accepted method to measure livestock intensity is by determining animal units per acre. One animal unit is equal to 1,000 pounds. Depending upon the type of livestock, an animal can literally be measured in fractional units, e.g. 5 sheep

equal 1 animal unit. For the 271 parcels that had information on type and quantity of animals an estimate of animal units per acre could be calculated. The average density of animal units per acre was about .5 animal units per acre (or just over 2 acres per animal unit).

9. The Board finds that the above data supports the concern that commercial farming is decreasing in Island County and that farmers are facing an increasingly difficult ability to profit from agriculture. In fact, small scale rural agriculture outweighs commercial agriculture both in acres and number of farms. The survey conducted identifies 1,881 parcels and nearly 14,000 acres of land within the rural area that has an agricultural activity taking place while lands that are zoned for agriculture comprise 427 parcels and 10,000 acres.
10. In October 2005 the County supplemented the summary report with a GIS based analysis of where the surveyed farm lands were located with respect to critical areas. R-8414. Critical areas that were evaluated include wetlands, streams, habitats of local importance and salmon watersheds. In addition to the surveyed farm lands the analysis also included lands zoned Commercial Agriculture and Rural Agriculture. The detailed results of the supplemental critical area summary are contained in appendix A of the summary report. A query was performed that overlaid each critical area with the Commercial Agriculture zone in order to calculate the number of acres of overlap. The amount of overlap was used to determine what percent of the CA zone has that particular critical area present. Similar queries and calculations were then performed for the RA zone and the rural area. For example, the GIS analysis showed that within the CA zone there are approximately 4,500 acres of which 1,650 acres are identified as having streams, or about 37% of the CA zone. Within the RA zone there are about 6,750 acres of which 2,625 acres are identified as having streams, or about 39%. And in the rural area there are about 12,300 acres of which 2,530 acres are identified as having streams, or about 20%. For the four critical areas that were evaluated the CA and RA zone generally have a much higher percentage of land covered with critical areas. The rural area tends to have a much lower percentage. The conclusions of this analysis reinforce the previously held belief that the more productive commercial lands were established in areas of bottomland that have access to water for livestock and pastures that are more ideal for grazing and horticulture.

## **EDUCATION AND OUTREACH**

1. The Washington State University Cooperative Extension administers the Island County 4-H Youth Development Program. The Program Coordinator has expressed concern over how the County's rules will affect small scale farming in the rural area. In a letter dated May 24, 2005 several salient issues were raised with respect to how their membership may be affected in the event that a set of rules is adopted that fails to afford landowners with needed flexibility in the management of their land. R-8121. They indicate that 4-H families are conducting agricultural activities in the rural zone ranging from raising a

small flock of ducks to raising beef, goats, and horses to growing vegetables and/or fruit trees. WSU stresses that these 4-H participants are not just playing at farming, they are raising food for their families, learning what it means to live with the land instead of against it, supplementing income, and preparing a new generation of kids to continue a long standing cultural tradition of self-sufficiency. WSU notes that BMPs offer an opportunity for people to live on their land in a gentle manner, they offer a way for people to continue farming traditions which are declining in the face of environmental limitations and they allow for flexibility.

2. The Board finds that there are numerous organizations and individuals who are initiating efforts to provide education and outreach on agriculture and environmental matters and that the citizens of this county have responded favorably to these efforts. The effect of these efforts are difficult to quantify but they have clearly had a positive impact. The Board has learned that Camano Island is one of only a very few number of communities that has received national certification in the National Wildlife Federation's Backyard Wildlife Habitat Program. In just 3 years over 500 properties have been enrolled in the program. On an annual basis the County provides \$180,000 to the Washington State University Cooperative Extension who successfully administers such programs as WSU Livestock Advisors, Island County 4-H, Sound Waters Workshop, Beach Watchers, WSU Master Gardeners, the Whidbey Gardening Workshop, the Dairy program, and the Small Farm Workshop series. The Conservation Districts provide routine training with a direct focus on sound farming practices. For the last 35 years the Cattlemen's Association has been teaching classes on winter pasture and animal management practices. Skagit Farmers Supply operates 6 retail outlets that serve residents of Island County and offers technical advice and education at their outlets and by participating in workshops organized by WSU and the Conservation Districts. Local farmers markets and the Tilth Associations enjoy tremendous support from the community. The Tilth's mission is to promote environmentally sound and sustainable agriculture. These examples represent snapshot of the myriad of programs in Island County that seek to educate the community about the environment and agriculture. The Board finds that this provides reassuring evidence that effective education efforts will yield the greatest return on investment and that, as a whole, the community will embrace practices that they learn are good for the environment and good for agriculture. *See R8711*

## **ENFORCEMENT AND ADAPTIVE MANAGEMENT**

1. A review and comparison of the approaches taken by other counties to the regulation of existing and ongoing agriculture was completed by the County and is included in the County's Record as R8261. Every county that regulates existing agriculture uses NRCS BMPs to provide critical area protection.
2. The County also compared its rules for enforcement with regulations of other counties. The Board finds, based on this review that Island County's enforcement regulations are

comprehensive and provide effective tools to protect critical areas. This is particularly true because the County gives first priority to complaints relating to critical areas. See R-8267 and 7089. The County further finds that a complaint based enforcement program has and will effectively address code violations.

## **LOCAL CIRCUMSTANCES**

1. Small-scale low intensity farming is the predominant agriculture in Island County. Unlike other counties such as Skagit and Whatcom, commercial farms are declining in acreage and have negative net income. Today less than 350 farms are classified by the US Census as commercial and less than 300 are zoned CA or RA, the County's commercial zoning classification.
2. Though commercial agriculture is declining in Island County, agriculture generally is a dominant land form in the County and a significant contributor to rural character. The overwhelming testimony received from Island County residents urged the Board to continue to support and encourage farming both large and small wherever it occurs.
3. The County's survey of rural non-commercial agriculture indicates that the vast majority is very small scale and low intensity. Public testimony indicates that this rural farming activity is a lifestyle choice not an economic enterprise. Both the Planning Commission and the Board heard substantial and repeated testimony that farming in Island County is a precarious business. Therefore, the County does not want to adopt regulatory actions that cause farming to decline further.
4. Island County residents have a special and unique commitment to voluntary protection of the environment. Senator Mary Margret Haugen placed special emphasis on the importance of voluntary efforts in her legislation. SB 6367. Given the commitment to voluntary protection, a self-enforcing program that uses NRCS BMPs adapted specifically for low intensity agricultural practices has a very high chance of success.
5. Farming activity located outside the CA and RA zones is crucial to the future viability of farming in these zones. Commercial farmers lease these lands to provide hay and pasture. Rural farming also serves to buffer commercial farming from more intense rural uses and most FFA and 4-H members come from rural, not CA or RA lands. Therefore, it is just as important to recognize and protect the important contribution of rural zone farming activities to the rural character of Island County as it is to recognize and conserve land of long term or local commercial significance.

EXHIBIT D

STANDARD FARM MANAGEMENT PLAN

CHECKLIST FOR EXISTING LOW INTENSITY AGRICULTURAL ACTIVITIES

The purpose of this checklist is to provide agricultural operators who are conducting Low Intensity Agricultural Activities with a general list of management practices that must be implemented for activities being conducted within or nearby wetlands and streams or within areas highly susceptible to groundwater pollution. If you are not conducting an agricultural activity within or nearby a wetland or stream you are not affected by these rules. Terms that are underlined are further defined in the supplemental sheet on page 6.

The requirements set forth in this checklist are general. If these requirements do not work for your operation you may have a Custom Farm Management Plan prepared that will take into account your personal objectives and the conditions that are present on your site. Custom Farm Management Plans will be prepared at no cost to you by the Whidbey Island Conservation District or the Snohomish Conservation District. You may also hire a private consultant to prepare a custom plan.

SECTION I – Filling out Section I is critical. These 8 questions will help you determine whether you are required to obtain a <u>custom farm management plan</u> , or if you are totally exempt from any requirements, or if you are eligible to simply employ the requirements set forth within the attached materials.			
1. Was your agricultural activity in existence and lawfully established on or before December 1, 1998? <sup>1</sup>	Yes	No	If yes, please continue to question #2.  If no, you do not need to answer any additional questions because you are not eligible to use this checklist and are required to comply with the full extent of the critical areas ordinance (Chapter 17.02 ICC).
2. If you answered yes to question #1, is your agricultural activity residential in nature or do you have less than 1 <u>animal unit</u> per 2.5 acres of grazed land? (1 <u>animal unit</u> = 1,000 lbs. of livestock)	Yes	No	If yes, you are exempt from these requirements. You may continue your operation as you have been doing so in the past and are not subject to any additional requirements.  If you answer no please continue to question #3.
3. Are there <u>wetlands</u> , <u>streams</u> , farmed wet meadows, or <u>drainage ditches</u> on your property, or on adjoining property? Or, are you located within	Yes	No	If yes, please continue to question #4.  If no, you are exempt from these

<sup>1</sup> The County has had wetlands regulations since 1984 that prohibited the expansion of exiting farming activities into wetlands without first obtaining County approval. Therefore, if an unauthorized expansion of farming into a wetland or wetland buffer has occurred between 1984 and the present, then that portion of your farming activity has not been lawfully established.

<p>a “Critical Aquifer Recharge Area” (CARA) designated as a “high susceptibility recharge area”, as depicted on Island County Maps? Sometimes, it is difficult to know whether a ditch is a <u>stream</u> or what a <u>wetland</u> looks like. If you need additional assistance for determining whether you have wetlands or streams, or to determine if you are located within a high susceptibility recharge area, contact Island County.</p>			<p>requirements and need not continue.</p>
<p>4. If you are located within a critical aquifer recharge area designated as a high susceptibility area, does your activity involve any application of fertilizer, manure, soil amendments (compost), insecticide or herbicide?</p>	<p><u>Yes</u></p>	<p><u>No</u></p>	<p>If yes, you must have a <u>custom farm management plan</u> prepared for your property and need not continue answering these questions.</p> <p>If no, please continue to question #5</p>
<p>5. Are you conducting a <u>horticultural</u> activity within 100 feet of a <u>stream</u> or <u>wetland</u>?</p>	<p><u>Yes</u></p>	<p><u>No</u></p>	<p>If yes, you must have a <u>custom farm management plan</u> prepared for your property and need not continue answering these questions.</p> <p>If no, please continue to question #6</p>
<p>6. If you have livestock, do you have more than 1 animal unit per 2.5 grazed acres but less than 1 <u>animal unit</u> per <u>grazed</u> acre on your property (1 <u>animal unit</u> = 1,000 pounds of livestock)?</p>	<p><u>Yes</u></p>	<p><u>No</u></p>	<p>If yes, please continue to question #7</p> <p>If no, meaning that you have more than 1 animal unit per grazed acre, you must have a <u>custom farm management plan</u> prepared for your property and need not continue answering these questions.</p>
<p>7. If you answered yes to question #3:</p> <p>a. Are you haying within 100 feet of those features?</p> <p>b. Are there livestock within 100 feet of those features?</p>	<p><u>Yes</u></p> <p><u>Yes</u></p>	<p><u>No</u></p> <p><u>No</u></p>	<p>If you answer yes to either question, you are required to use the standard set of practices outlined in the attached pages rather than have a custom farm management plan prepared. Please continue with the rest of the checklist.</p> <p>If you answer no to both questions, you are exempt from these requirements and need not continue.</p>

Now that you have completed the first page you should be able to determine what rules apply to your agricultural activity. If you answered yes to either question 8a or 8b you should continue through the rest of this checklist and accompanying TIPS Guide. The checklist and brochure outline what practices you should be implementing on your land. If these practices do not adequately accommodate your needs you should contact the local Conservation District for the purposes of having a custom farm management plan prepared.

SECTION II – Section II asks a series of more specific questions about your operation. Based on your answer to these questions, you will find a reference that directs you to specific sections of the TIPS Guide or other resources that detail the management practices that must be implemented on your property.

1. Do you have a current farm management plan?	Yes	No	Refer to Page 1 and 11 of the TIPS guide. Please continue.
2. What is the distance from any existing confinement areas to any water well(s)?	Less than 100 feet	More than 100 feet	<p>If less than 100, you must have a custom farm management plan prepared for your activity. New confinement areas are prohibited within 100 feet of a water well.</p> <p>If more than 100 feet, you have no additional requirements related to this question. Please continue.</p>
3. How close is the <u>confinement area</u> or <u>feeding area</u> to surface water?	Less than 200 feet	More than 200 feet	<p>If less than 200, refer to Pages 1, 2 and 4 of the TIPS guide and to practice #4 in the supplemental conservation practice sheet attached as Page 11. You may choose from one or more of the following options: buffer strip, heavy use area, fencing/use exclusion, and waste storage.</p> <p>If more than 200 feet, you have no additional requirements related to this question. Please continue.</p>
4. Does the <u>confinement area</u> slope towards surface water and encourage overland movement of water?	Yes	No	<p>If yes, refer to Page 4 and 5 of the TIPS guide and to practice #4 in the supplemental conservation practice sheet attached as Page 11. You may choose from one or more of the following options: buffer strip, heavy use area and waste storage.</p> <p>If no, you have no additional requirements related to this question. Please continue.</p>

<p>5. Are there established pathways for movement of surface water runoff from <u>confinement area</u>? (ditch or subsurface drain)</p>	<p>Yes</p>	<p>No</p>	<p>If yes, refer to Page 4 of the TIPS guide and to practice #4 in the supplemental conservation practice sheet attached as Page 11. You may choose from one or more of the following options: subsurface drainage, French drain, grassed waterway.</p> <p>If no, you have no additional requirements related to this question. Please continue.</p>
<p>6. Do you control runoff from <u>confinement areas</u> to surface and ground water?</p>	<p>Yes</p>	<p>No</p>	<p>Runoff from confinement areas must be properly managed. Refer to Pages 4 and 7 of the TIPS guide and to practice #4 in the supplemental conservation practice sheet attached as Page 11. You may choose from one or more of the following options: buffer strip, heavy use area and waste storage. Please continue.</p>
<p>7. Do you divert rainfall and clean water, including roof runoff, away from livestock buildings and manure storage areas?</p>	<p>Yes</p>	<p>No</p>	<p>Runoff from livestock buildings and manure storage areas must be properly managed. Refer to Page 4 of the TIPS guide. You may choose from one or more of the following options: roof runoff management and underground outlet. Please continue.</p>
<p>8. Do animals have access to surface waters?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, refer to Pages 3 and 7 of the TIPS guide and to practice #2 in the supplemental conservation practice sheet attached as Page 11. You may choose from one or more of the following options: fencing, tree/shrub planting, off-stream watering.</p> <p>If no, you have no additional requirements related to this question. Please continue.</p>
<p>9. Do you use <u>Farmed Wet Meadows</u> as grazing land for your livestock?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, refer to Pages #2 and #3 of the TIPS guide and to practice #2 in the supplemental conservation practice sheet attached as Page 11.</p> <p>If no, you have no additional requirement related to this question. Please continue.</p>

<p>10. Does manure and sediment have the potential to move offsite during rainfall events?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, refer to Pages 2, 3, 4, 5 and 7 of the TIPS guide and to practice #5 in the supplemental conservation practice sheet attached as Page 11. You may choose from one or more of the following options: buffer strip, planned grazing system and heavy use area.</p> <p>If no, you have no additional requirements related to this question. Please continue.</p>
<p>11. Do you cover your manure storage?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, you are already implementing a good management practice.</p> <p>Refer to Page 5 of the TIPS guide and to practice #5 in the supplemental conservation practice sheet attached as <u>Page 11</u> for proper manure management practices. Please continue.</p>
<p>12. Are you stacking your manure within 200' of a <u>wetland</u> or <u>stream</u>?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, refer to practice #5 in the supplemental conservation practice sheet attached as Page 11.</p> <p>If no, you are already in compliance with the nutrient management requirements. Please continue.</p>
<p>13. Are you applying manure on fields outside of the <u>growing season</u> (April 15 to October 15)?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, you must either cease doing so or have a custom farm management plan prepared for your operation.</p> <p>If no, you are already implementing a good management practice. Additional information on how manure should be applied can be found on Pages 2 and 5 of the TIPS guide. Please continue.</p>
<p>14. Are pastures grazed below 3-4 inches?</p>	<p>Yes</p>	<p>No</p>	<p>If no, your are already implementing a good management practice.</p> <p>If yes, please refer to pages 2, 3, 4 and 6 of the TIPS Guide for information on proper grazing management. You may choose from one or more of the following options: planned grazing system, pasture/hayland planting, heavy use area, waste storage and fencing. Please continue.</p>

<p>15. Is there a 30 to 50 foot <u>vegetated buffer strip</u> between livestock facilities and surface waters?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, you are already in compliance with the standard for this practice. You should refer to the supplemental conservation practice sheet attached as Page 11 for determining the appropriate vegetated buffer strip distance.</p> <p>If no, filter strips are required along <u>wetlands</u> and <u>streams</u> when livestock are present on your property. Refer to Pages 4 and 7 of the TIPS guide and to practices #4 and 5 in the supplemental conservation practice sheet attached as Page 11. You may choose from one or more of the following options: heavy use area, fencing, tree planting, and buffer strip. Please continue.</p>
<p>16. Do you <u>soil test</u>?</p>	<p>Yes</p>	<p>No</p>	<p>If yes, you are already implementing a good management practice.</p> <p>If no, refer to Page 2 of the TIPS guide. You may choose from one or more of the following options: nutrient management. Please continue.</p>
<p>17. Are the naturally timbered areas on your property protected from trampling, or tree bark damage, due to livestock?</p>	<p>Yes</p>	<p>No</p>	<p>You may choose from one or more of the following options: use exclusion or fencing. Please continue.</p>
<p>18. Are you conducting a haying operation and other related haying activities within 50 feet of a <u>stream</u> or <u>wetland</u>?</p>	<p>Yes</p>	<p>No</p>	<p>If no, you have not practices to implement for this question.</p> <p>If yes, refer to practice #1 and #5 in the supplemental conservation practice sheet attached as Page 11. Please continue.</p>

**SECTION III – Acknowledgement of Compliance.** As a low intensity agricultural activity where critical areas are present you are not required to have a custom farm management plan prepared. However, you are required to comply with the conservation practices that are outlined in this checklist. Each agricultural activity will have different requirements based on how you answered the prior questions. As a low intensity activity you may complete this self assessment in order to determine what is required given your site conditions and your operation. But compliance is mandatory. Please complete the remaining questions, affix your signature and return to the noted address. Signing this document is your acknowledgement that you have read the requirements and are agreeing to implement the required management practices if you have not already done so. County regulations allow you 2 years to implement these management practices.

Irrespective of how you have answered any of the previous questions please check the appropriate box(es) below and return it to Island County. If you received this checklist it means that the County believes that an agricultural activity is occurring on your property. The County requires that all landowners who are conducting an agricultural activity must return this acknowledgement. Please note if you do not return this questionnaire by the due date in the cover letter, you will be required to comply with the County's critical area regulations.

I have read the enclosed materials and have determined that my agricultural activity is classified as exempt from the critical area regulations.

I have read the enclosed materials and have determined that my agricultural activity is classified as Low Intensity and am therefore eligible to use this standard checklist. As a Low Intensity Activity I commit to implement the practices that have been outlined in the enclosed materials.  I am neither exempt nor a Low Intensity activity. I am a Moderate or High Intensity activity and have already had a Custom Farm Management Plan prepared for my site that is being implemented.

I am neither exempt nor a Low Intensity activity. I am a Moderate or High Intensity activity and will be pursuing preparation of a Custom Farm Management Plan.

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ Zip Code \_\_\_\_\_

## KEY DEFINITIONS/TERMS

1. Animal Unit: An animal unit equals a 1000 lb cow with or without a nursing calf, or their equivalent.
2. Confinement Area (Sacrifice area, or Heavy Use Area): A small enclosure, corral, or pen which is meant to provide an outdoor living, exercise, or feeding area during winter months (and summer drought). This area is sometimes referred to as a sacrifice area because the presence of animals on it during wet months, or overgrazing during drought, could be damaging to vegetation. Although, the main pastures or grazing areas will not be subject to overgrazing and soil compaction from uncontrolled animal access. Manure is collected from these areas and stored.
3. Critical Areas: Defined as streams, wetlands, and critical aquifer recharge areas and are defined in Chapter 17.02 ICC.

Streams are not intended to include irrigation or drainage ditches or swales, canals, storm or surface water run-off devices or other artificial watercourses unless they are used by salmonids or to convey streams naturally occurring prior to construction of such watercourses.

Wetlands are not intended to include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.

Agricultural activities that will continue to be allowed include the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas.

4. Custom Farm Management Plan: A custom plan is developed for a specific property owner/farmer for implementation of NRCS BMPs. A custom plan can be prepared by a property owner, lessee or consultant if they are trained by NRCS or by a Conservation District or the County
5. Drainage Ditches: Tile drains and/or open (including hand dug) drainage ways for the purpose of draining or routing water. Some drainage ditches are regulated streams that were altered by human action while others are man made and are not regulated.
6. Existing and Ongoing Agriculture: Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. These activities include the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an on-going operation. An operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five (5) years, on or after October 1, 1998 unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and on-going agricultural activity. Forest practices are not included in this definition.

7. Existing Use: A Use which meets the definition of Existing and was lawfully established and maintained including those which, because of the enactment of this Chapter, no longer conforms to the land Use standards or Use regulations of the zone in which it is located.
8. Farm Use: The current employment of land for the purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the producing of, livestock, poultry, fur-bearing animals, dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” also includes;
  1. the current employment of land for the purpose of stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows;
  2. the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use;
  3. the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission; and
  4. farm use includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.
9. Farmed Wet Meadows: Shall mean those Category B wetlands whose vegetative cover has been sufficiently modified in the past as a result of grazing, seeding, cutting for hay or other agricultural practices, such that they are dominated by a pasture species (such as blue grass, orchard grass, fescue, clovers, reed canary grass, etc.) and invasive wetland species indicative of continuous disturbance. They often are saturated or have standing water during the wet season and part of the growing season but are often dry during the summer months.
10. Feeding Area: An area where livestock are fed repeatedly over time.
11. Grazing Season: A period of time when grazeable vegetation is actively growing. Typically between the middle of March to the middle of October depending on the rainfall during a given year.
12. Horticulture: Land used for growing vegetable, orchard, fruit, nut, berry, vineyard, and other bush fruit and similar crops. Nurseries and other ornamental plantings are included.
13. Low Intensity Agricultural Activity: Shall mean existing and on-going agriculture including livestock management with an Animal Unit density of less than one (1) per acre; seasonal hay mowing and related activities; horticulture involving one (1) acre or less of cultivated land; and all other existing and on-going agricultural activities that do not constitute Farm Use.

For Low Intensity Agricultural Activities located within or adjacent to a regulated wetland, stream or buffer, or a highly susceptible Critical Aquifer Recharge Area the owner/operator would, at a minimum implement the standard farm management practices outlined in this checklist or, in the event these standards do not accommodate the farmer’s needs, he/she may elect to have a Custom Farm Management Plan prepared and implemented.

14. Residential Agriculture and Landscaping: Planting, irrigating, fertilizing, spraying, mowing and pruning and maintenance and repair of yard or garden structures when such activities are part of existing normal residential landscaping activities and no building permit is required. Residential agriculture includes uses

that are considered Accessory Uses under Chapter 17.03 ICC. Accessory Uses must be incidental to or secondary to a single family dwelling. Residential agriculture cannot constitute Farm Use. Examples of Residential Agriculture include vegetable/flower gardens or orchards normally associated with a rural home and animal husbandry involving less than one (1) Animal Unit per two and one-half (2.5) acres. This exemption does not allow further intrusion into a wetland, fish and wildlife habitat conservation area, geologically hazardous area or their buffers.

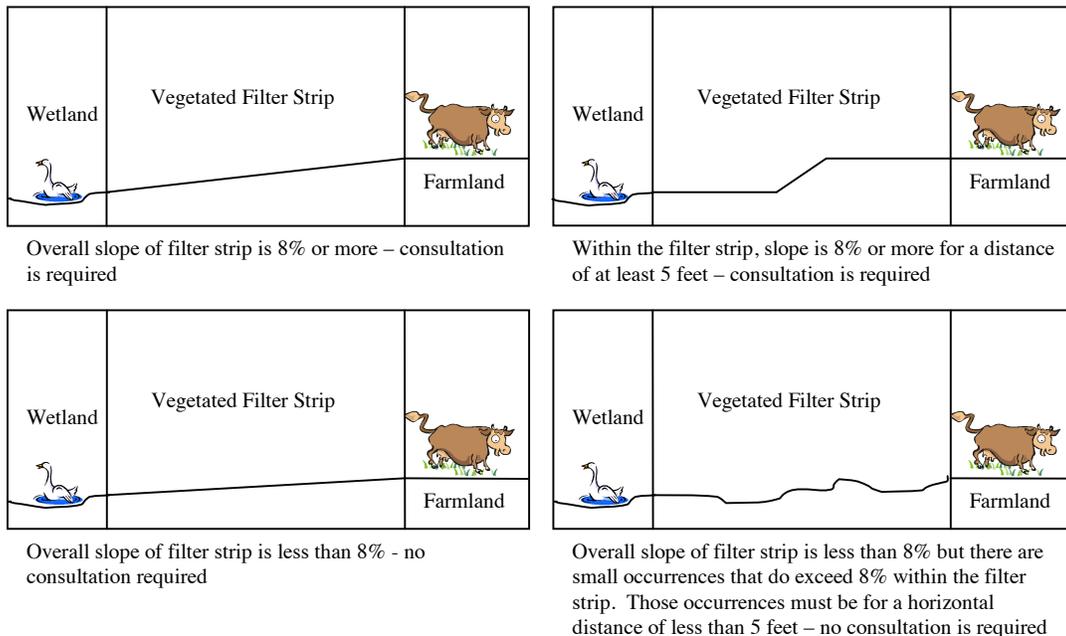
15. Snohomish Conservation District: For Camano Island residents, contact the farm planner at (425) – 335-5634 ext. 118
16. Soil Test: A soil test indicates the availability of nutrients present in the soil and the availability of those nutrients to crops grown there. In agriculture, a soil test is the analysis of a soil sample to determine nutrient content, composition and other characteristics. Tests are usually performed to measure fertility and indicate deficiencies that need to be remedied.
17. Vegetated Buffer Strip: A strip or area of herbaceous vegetation situated between crop land, grazing land, forest land or disturbed land and environmentally sensitive areas.
18. Whidbey Island Conservation District: For Whidbey Island residents, contact the farm planner at (360)-678-4708.

## CONSERVATION PRACTICE STANDARDS

It is recognized that the practices outlined in this set of materials are very general and may not fit your needs. If the practices outlined in the TIPS guide or within this checklist do not work for you, your local Conservation District may prepare a Custom Farm Management Plan for your property that often times will provide greater flexibility for your operation.

1. Having buffer strips: Haying is permitted within the vegetated buffer strip of a wetland or stream during anytime of the year.
2. Livestock:
  - a. Livestock shall be excluded from stream and wetland areas at all times, except for those areas approved as stream crossings and access points.
  - b. For all Category A wetlands:
    - i. A vegetated buffer strip of 30 feet shall be maintained for all Category A wetlands.
    - ii. An additional 20 foot animal management zone shall be maintained where livestock is prohibited from November 1 to March 31.
  - c. For all streams that don't support salmon habitat and for Category B wetlands a vegetated buffer strip of 30 feet shall be maintained.
  - d. For all streams that support salmon habitat or that are tributary to streams that support salmon habitat a vegetated buffer strip of 50 feet shall be maintained in which livestock are prohibited throughout the entire year.
  - e. Farmed wet meadows are defined differently than Category A and B wetlands and are therefore treated differently. Farmed wet meadows do not have buffers. Grazing may occur up to the edge of a farmed wet meadow year round. Livestock are allowed within a farmed wet meadow from June 1 to October 31. Livestock may be allowed within farmed wet meadows between November 1 to May 31 only if a custom farm management plan has been approved; or, on an annual basis, a certified farm planner may provide written consultation to the farmer indicating that grazing within the farmed wet meadow of a given site outside of the standard window is consistent with accepted NRCS conservation practices.
  - f. In the event that a farmed wet meadow is adjacent to a wetland or a stream the applicable wetland or stream buffer is still required.
  - g. Single wire fencing may be used, if electric.
  - h. Off-stream watering (year-round) of livestock is encouraged. If in stream watering and/or access is proposed it must first receive approval from the Washington State Department of Fish and Wildlife and a consultation with a certified farm planner.
3. Heavy Use areas (Confinement Areas or Sacrifice Areas) will be used during the winter as well as the summer dry season.
  - a. Proper footings such as rock, hogfuel or other appropriate methods shall be used.

- b. Manure shall be picked up at least every 3 days.
- c. Shall be located no closer than 50 feet to a wetland or stream.
- d. A minimum 30 foot vegetated buffer strip measured from the edge of the wetland or non-salmon bearing streams shall be maintained. Within the 30 foot buffer strip if the slope exceeds 8% then consultation with a certified farm planner is mandatory. Additional measures may be required in order to ensure filter strips are providing adequate resource protection. The 8% slope must persist for a distance of at least 5 feet anywhere within the buffer strip. Slopes of 8% or more that persist for less than 5 feet are not required to seek consultation. See the example diagrams in the next section.
- e. A minimum 50 foot vegetated buffer strip measured from the edge of a salmon bearing streams shall be maintained. Within the 50 foot buffer strip if the slope exceeds 8% then consultation with a certified farm planner is mandatory. Additional measures may be required in order to ensure filter strips are providing adequate resource protection. The 8% slope must persist for a distance of at least 5 feet anywhere within the buffer strip. Slopes of 8% or more that persist for less than 5 feet are not required to seek consultation.



- f. Roof drains shall be diverted away from the confinement area or to nutrient ponds.
  - g. Refer to the attached Sacrifice Area handouts for additional requirements and guidance.
4. Nutrient Management
- a. From November 1 to March 31 nutrient stockpiled within 200' of a wetland or stream shall be covered in a manner that excludes precipitation and allows free flow of air to minimize fire

- danger; or, in the alternative, shall be placed in an uncovered concrete bunker or nutrient lagoon or held for pickup in a dumpster, vehicle or other facility designed to prevent leachate from reaching any streams or wetlands. Concrete bunkers shall be monitored quarterly by the landowner for the first two years after installation, then annually unless problems were identified in the first two years, in which case quarterly monitoring shall continue and appropriate adjustment shall be made to prevent leachate from reaching surface water, streams, wetlands, or highly susceptible critical aquifer recharge areas.
- b. Collection and storage methods may vary from simple bin designs to engineered concrete structures.
  - c. All waste shall be covered with a tarp or some form of roofed structure.
  - d. Stockpiling manure within 100 feet of a stream or wetland is prohibited.
  - e. Surface water shall be diverted away from nutrient storage areas.
  - f. Nutrient application within a vegetated buffer strip in the form of manure or commercial fertilizer is not prohibited, but it can only be allowed subject to review and approval of a custom farm management plan.
5. Existing agricultural activities are prohibited from encroaching further into, the standard buffer established in the critical areas ordinance for streams and wetlands.