

---

## VOLUNTARY STEWARDSHIP PROGRAM

### STATEWIDE ADVISORY COMMITTEE AND CONSERVATION COMMISSION

#### POLICY ADVISORY #04-19

### *COUNTY CRITICAL AREA ORDINANCES IN THE VOLUNTARY STEWARDSHIP PROGRAM*

**REVISED APRIL 2021**

#### Purpose

The purpose of this advisory is to provide guidance for counties who have opted into the VSP (VSP counties) on how VSP relates to updates to their Critical Area Ordinance (CAO).

## THE RELATIONSHIP BETWEEN VSP AND UPDATING A CAO

VSP counties may not amend or update a CAO with respect to agricultural activities in a participating watershed as identified in the county opt-in ordinance, unless certain statutory conditions have been met.<sup>1</sup>

VSP (as codified in RCW 36.70A) applies to all agricultural activities in opt-in counties within identified participating watersheds. These watersheds were identified by the county in their ordinance opting-in to VSP. In watersheds not identified by the county opt-in ordinance the CAO, not VSP, would apply. Some of the VSP requirements apply to the county at the time the opt-in ordinance is passed; while other requirements apply at the time the county receives money to implement VSP.

RCW 36.70A.130(8) covers when a VSP county may amend or update their critical areas ordinances for agricultural activities within participating watersheds and lists five specific instances when these amendments or updates may be made:

- (b) A county that has made the election under RCW [36.70A.710](#)(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:
  - (i) A work plan has been approved for that watershed in accordance with RCW [36.70A.725](#);
  - (ii) The local watershed work group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW [36.70A.720](#);
  - (iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;
  - (iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

---

<sup>1</sup> [RCW 36.70A.130\(8\)\(b\)](#)

- (v) Three or more years have elapsed since the receipt of funding.<sup>2</sup>

Therefore, absent one of these conditions being met, a VSP opt-in county may not amend or update a CAO with respect to agricultural activities in a participating watershed as identified in the county opt-in ordinance.

One additional exception to the prohibition against CAO amendments for VSP counties is when an amendment is required to comply with federal requirements. See *VSP and Federal Regulations* section below.

## VSP AND FEDERAL REGULATIONS

If any provision of RCW 36.70A conflicts with certain federal requirements, that provision is inoperative to the extent of the conflict.<sup>3</sup> Although RCW 36.70A.130(8)(b) identifies only specific circumstances when a VSP county may amend or update a CAO, if a CAO must be amended to comply with federal funding requirements, RCW 36.70A.904 allows for the amendment. If the state is receiving funding from NOAA or FEMA (or any other federal agency) and compliance through updating a CAO to conform to new FEMA or NOAA (or other federal regulations) is required, then the county may amend the CAO to achieve this compliance. Such amendments would apply to all agricultural activities in the country.

## PRACTICAL APPLICATION OF UPDATING A COUNTY CAO

For counties that have opted in-to VSP, we recommend following the [Department of Commerce's Critical Area's Handbook](#), Chapter 5, Protecting Critical Areas in Natural Resource Lands<sup>4</sup>, to reference VSP in their CAO.

---

<sup>2</sup> [RCW 36.70A.130 \(8\)](#)

<sup>3</sup> [RCW 36.70A.904](#)

<sup>4</sup> <https://deptofcommerce.box.com/shared/static/3s5d5or3tdn21i7lhf9y22v8hgoqoodu.pdf>

## Background

The Conservation Commission (Commission) is empowered to establish policies and procedures for implementing the Voluntary Stewardship Program (VSP).<sup>5</sup> The Commission, after consultation with the VSP Statewide Advisory Committee (SAC), provides this advisory to the VSP county work groups to advise them on the roles and reporting obligations during VSP implementation.

The VSP is codified in RCW Chapter 36.70A.700 and the Commission administers the VSP.<sup>6</sup> Under the VSP, the Commission is charged with establishing the Statewide Advisory Committee.<sup>7</sup> “The role of the statewide advisory committee is to advise the commission and other agencies involved in development and operation of the program.”<sup>8</sup> The SAC is intended to be comprised of a total of eight individuals, with two representatives each for counties, agricultural organizations, environmental organizations, and invited tribal governments.<sup>9</sup>

The Commission has a number of other duties in the VSP that relate to the Statewide Advisory Committee, including:

- Provide administrative support for the program's statewide advisory committee in its work.”<sup>10</sup>
- Maintain a website about the program that includes times, locations, and agenda information for meetings of the statewide advisory committee;<sup>11</sup>
- Conduct a review of the program beginning in 2017 in conjunction with the statewide advisory committee and every five years thereafter, and report its findings to the legislature by December 1st;<sup>12</sup>
- Consult with the Statewide Advisory Committee upon receipt of a report by a watershed work group under RCW [36.70A.720](#)(2)(b);<sup>13</sup> and

---

<sup>5</sup> [RCW 36.70A.705\(2\)\(a\)](#)

<sup>6</sup> [RCW 36.70A.705\(1\)](#)

<sup>7</sup> [RCW 36.70A.745](#)

<sup>8</sup> [RCW 36.70A.745\(2\)](#)

<sup>9</sup> [RCW 36.70A.745\(1\)\(a\)](#)

<sup>10</sup> [RCW 36.70A.705\(2\)\(h\)](#)

<sup>11</sup> [RCW 36.70A.705\(2\)\(i\)](#)

<sup>12</sup> [RCW 36.70A.705\(2\)\(k\)](#)

<sup>13</sup> [RCW 36.70A.730](#)

- 
- Consult with the statewide advisory committee and other state agencies, not later than August 31, 2015, and each August 31st every two years thereafter, and report to the legislature and each county that has elected under RCW [36.70A.710](#) to participate in the program on the participating watersheds that have received adequate funding to establish and implement the program.<sup>14</sup>

---

<sup>14</sup> [RCW 36.70A.740\(4\)](#)