Chapter 365-191 WAC

VOLUNTARY STEWARDSHIP PROGRAM APPROVAL PROCEDURES

WAC

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PART ONE

GENERAL CONSIDERATION

WAC 365-191-010 Purpose and authority. (1) Chapter 360, Laws of 2011 establishes the voluntary stewardship program as an alternative approach for counties to protect critical areas on agricultural lands. The voluntary stewardship program is not limited to designated agricultural lands of long-term commercial significance. The program is administered by the conservation commission.

(2) A county that chooses to participate in the program is required to develop work plans to protect critical areas while maintaining the viability of agriculture through voluntary, incentive-based measures.

(3) If a watershed is subject to RCW 36.70A.735(2) then a county is given eighteen months to take one of four actions.

(4) The purpose of this chapter is to adopt rules to implement procedures for two of those four options: Department approval of a watershed work plan under RCW 36.70A.735 (1)(a); and department certification of development regulations under RCW 36.70A.735 (1)(c).

(5) This chapter is established pursuant to RCW 36.70A.735(3).

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-010, filed 9/29/15, effective 10/30/15.]

WAC 365-191-020 Definitions of terms as used in this chapter. (1) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(2) "Commission" means the state conservation commission as defined in RCW 89.08.030.

(3) "Department" means the department of commerce.

(4) "Director" means the executive director of the state conservation commission.

(5) "Enhance" or "enhancement" means to improve the processes, structure, and functions existing, as of July 22, 2011, of ecosystems and habitats associated with critical areas.

(6) "Protect" or "protecting" means to prevent the degradation of functions and values existing as of July 22, 2011.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-020, filed 9/29/15, effective 10/30/15.]

PART TWO

WATERSHED WORK PLAN SUBMITTAL

WAC 365-191-200 County duties if a work plan is not approved, fails, or is unfunded. If a watershed work plan falls under RCW 36.70A.735(2), and the county chooses to develop, adopt, and implement a watershed work plan as described in RCW 36.70A.735 (1)(a), then the county will fall under one of these scenarios:

(1) Work plan not approved by commission: This section applies if the director did not approve a work plan submitted by the county.

(2) Work plan goals and benchmarks have not been met: This section applies if, within five years after receipt of funding, the watershed group finds that goals and benchmarks have not been met, and the director does not approve an adaptive management plan submitted by the county to meet the goals and benchmarks.

(3) Adequate funding not received by county or state agencies with responsibilities: The commission has determined under RCW 36.70A.740 that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have not received adequate funding to implement a program in the watershed; or

(4) Adequate funding not received by the watershed: The commission has determined under RCW 36.70A.740 that the watershed has not received adequate funding to implement the program.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-200, filed 9/29/15, effective 10/30/15.]

WAC 365-191-210 County submittal requirements. (1) If a work plan is not approved by the director, then the county must submit the following information to the department:

(a) The work plan and any supporting documentation submitted to the commission;

(b) The revised work plan and a description of how the county has addressed any deficiencies or issues cited by the commission;

(c) Evidence of adequate public notice;

(d) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process;

(e) Adopted resolutions of the county legislative body, if any; and

(f) Meeting minutes and public testimony for those meetings.

(2) Work plan goals and benchmarks not met:

(a) The approved work plan, including the goals and benchmarks;

(b) The adaptive management plan and any supporting documents submitted to the commission;

(c) A revised work plan, adaptive management plan, and a description of how the county has addressed any deficiencies or issues cited by the commission;

(d) Evidence of adequate public notice;

(e) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process;

(f) Adopted resolutions of the county legislative body, if any; and

(g) Meeting minutes and public testimony for those meetings.

(3) Adequate funding not received by county or state agencies with responsibilities:

(a) The approved work plan and any supporting documentation submitted to the commission; and

(b) Determination by the commission that county or state agencies with responsibilities have not received adequate funding.

(4) The commission has determined that the watershed has not received adequate funding to implement the plan:

(a) The approved work plan and any other supporting documentation submitted to the commission; and

(b) Determination from the commission that adequate funding for the watershed is not available.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-210, filed 9/29/15, effective 10/30/15.]

WAC 365-191-220 Process and criteria for department to review a county's watershed work plan. (1) A county choosing to develop, adopt, and implement a watershed work plan under RCW 36.70A.735 (1)(a) shall notify the department not less than one hundred twenty days prior to its submittal of their intent and which of the four scenarios under RCW 36.70A.735(2) it falls under.

(2) Prior to submitting the information as specified in WAC 365-191-210 to the department, the county shall conduct a public process consistent with locally adopted procedures.

(3) The department shall provide notice of the county submittal as follows:

(a) *Washington State Register*;

(b) Agency e-mail distribution list;

(c) Agency web site; and

(d) Commission.

(4) The department shall consult with the departments of agriculture, ecology, and fish and wildlife, the commission, and other relevant state agencies before approving or disapproving the proposed work plan. Thirty days will be provided to these agencies for review and comment.

(5) The department shall notify the county and parties providing written comment of its decision.

(6) The department's decision document shall include written findings and conclusions and shall specify the date in which the sixty-day appeal period commences.

(7) Criteria for review:

(a) Whether the watershed work plan is consistent with the elements of RCW 36.70A.720(1);

(b) Whether the submittal will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed; and

(c) Whether the consulted state agencies believe the submittal will address (a) and (b) of this subsection.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-220, filed 9/29/15, effective 10/30/15.]

WAC 365-191-230 Appeals. (1) The department's decision is subject to appeal under RCW 36.70A.280 to the growth management hearings board.

(2) The sixty-day appeal of a petition for review of the department's decision must be filed with the growth management hearings board within sixty days of publication in the *Washington State Register*.

(3) Only those parties with standing under RCW 36.70A.280(2) may appeal the department's decision.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-230, filed 9/29/15, effective 10/30/15.]

PART THREE

DEVELOPMENT REGULATION SUBMITTAL

WAC 365-191-300 Local process to review and if necessary revise development regulations to be certified by the department as protective of critical areas in areas used for agricultural activities. (1) A county choosing to adopt development regulations under RCW 36.70A.735 (1)(c) must notify the department in writing of its intent to submit existing or amended regulations for certification prior to initiating the regulation adoption process. Early notice is encouraged and will allow for consultation with the department and other agencies. Reviewing agencies shall coordinate between each other and with counties to ensure a common understanding of issues and options to address concerns.

(2) Prior to submitting development regulations to the department for certification, a county must conduct a public process consistent with locally adopted procedures.

(3) A county may submit draft regulations to the department for precertification. Precertification means submittal of draft regulations to the department for review and a nonbinding determination whether the draft regulations could be certified or, if not, what changes would be necessary. The department will review the draft regulations and provide a written opinion whether the regulations meet the criteria specified in WAC 365-191-330.

(a) Precertification is offered to identify significant issues prior to submittal to the department for formal certification.

(b) Prior to making its precertification determination, the department must consult reviewing state agencies, including the departments of agriculture, ecology, fish and wildlife, and the commission, as specified in RCW 36.70A.735 (1)(c).

(c) Precertification does not guarantee the outcome of the final department certification decision.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-300, filed 9/29/15, effective 10/30/15.]

WAC 365-191-310 Submittal of proposed regulations to the department for certification. (1) The department will provide a checklist of materials that must be included with the submittal of proposed regulations for certification. The checklist will not create new or additional requirements beyond the provisions of this chapter. At a minimum, the submittal must include the entire public record of the county development regulation adoption process, including:

(a) Proposed regulations;

(b) Evidence of adequate public notice;

(c) Evidence of compliance with chapter 43.21C RCW, (SEPA);

(d) Copies of all public written comments received, including a record of names and addresses of interested parties involved in the local government review process;

(e) Planning commission findings and recommendations;

(f) Adopted resolutions, if any, of the county legislative body; and

(g) Meeting minutes and public testimony.

(2) Counties are encouraged to forward proposed regulations that have been reviewed and recommended by the planning commission, with subsequent review by the county legislative body. The county legislative body should review the planning commission recommendation and, by a vote of the county legislative body, must forward proposed regulations to the department for certification. A county should not forward regulations that have been formally adopted.

(3) The department will review the submittal and make a determination of completeness. The county will be notified in writing of incomplete submittals, with direction from the department concerning missing or inadequate materials. Once the department issues a determination of completeness, it has ninety days to either approve or deny certification.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-310, filed 9/29/15, effective 10/30/15.]

WAC 365-191-320 Department process for certification of development regulations. (1) After making a determination of completeness, the department will notify reviewing agencies listed in WAC 365-191-300 (3)(b) of the county's submittal and the time frame for their formal review and comment.

(2) Reviewing agencies shall have thirty days to review and comment on the proposed regulations.

(3) The department shall provide notice of the county's request for certification as follows:

(a) *Washington State Register*;

(b) The department e-mail distribution list;

(c) The department web site;

(d) Local conservation districts.

(4) The department must notify the county and parties providing written comment of its certification decision.

(5) The department's certification decision document must include written findings and conclusions and the date in which the sixty-day appeal period commences.

(6) For compliance with RCW 36.70A.735 (1)(c), a county is encouraged to promptly adopt regulations certified by the department by ordinance, without substantial changes.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-320, filed 9/29/15, effective 10/30/15.]

WAC 365-191-330 Review criteria. (1) The scope of the department's review shall be limited to a review of existing or proposed development regulations submitted for certification and whether the regulations address the protection of critical areas in areas used for agricultural activities.

(2) Counties may consider Clallam, Clark, King, or Whatcom county's critical area regulation, in effect on July 1, 2011, as example regulations that protect critical areas in areas used for agricultural activities. Counties may also consider development regulations of another local government as long as those regulations have been upheld by a growth management hearings board or court after July 1, 2011.

(3) Regulations shall support the continuation of existing and ongoing agricultural operations.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-330, filed 9/29/15, effective 10/30/15.]

WAC 365-191-340 Procedures for amending development regulations after department certification. After initial certification under WAC 365-191-050, the department has no authority to certify future amendments proposed by counties.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-340, filed 9/29/15, effective 10/30/15.]

WAC 365-191-350 Appeals. (1) The department's decision is subject to appeal under RCW 36.70A.280 to the growth management hearings board.

(2) The sixty-day appeal period shall commence upon the date the department's decision is published in the *Washington State Register*.

(3) Only those parties with standing under RCW 36.70A.280(2) may appeal the department's certification decision.

[Statutory Authority: RCW 36.70A.735(3) and 36.70A.190. WSR 15-20-041, § 365-191-350, filed 9/29/15, effective 10/30/15.]