

Farmland Development Regulations

Grant deliverable: The County wants to update and improve its incentive programs so that they will be actively utilized and highly effective in the preservation of farmland. This grant would contribute to this goal by reimbursing the County for staff time to be spent reviewing and analyzing other development regulations for the purpose of developing strategies for updating such regulations for the purpose of preserving farmland.

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Attachment A. Definitions related to Agricultural Activities

1. Background. One of the June 15, 2005 “Initial Recommendations” of the Clallam County Agriculture Commission to the Clallam County Planning Commission is that the

“County amend the uses permitted on Agricultural Lands. These uses are ancillary to the agricultural use and would be subject to health and safety regulations, appropriate access, available parking, size restrictions, etc...”

- On-farm retail stands, including the sale of regionally produced agricultural products
- Construction of greenhouses and other farm buildings for retail and/or wholesale agricultural production
- On farm processing of agricultural products
- Making and selling compost
- Farm restaurants
- Agri-tourism activities
- Campgrounds and camping facilities
- Permanent and temporary housing for farm workers
- Construction, repair and maintenance of farm machinery
- Temporary educational seminars
- Bed and breakfast establishments”

Currently, “agricultural activities” are an Allowed use in all County zoning districts. “Agriculture” is broadly defined in the County zoning code at CCC 33.03.010(7) as

“...improvements and activities associated with the raising and harvesting of crops and livestock. ‘Agriculture’ includes ancillary activities, including equipment storage and repair, seasonal employee housing, and temporary on-site retail stands for the sale of agricultural goods.”

At CCC 33.03.010(4), “Accessory use or improvement” is defined as

“a use or improvement which is necessary for the full use and enjoyment of the main use of the property, is typically associated with the main use, and is subordinate to or incidental to the main use of a parcel and which includes the utilities necessary to serve the accessory use. Accessory uses and improvements are allowed in all zoning districts.”

The broadness of the County’s definitions for “agriculture” and “accessory use or improvement” has led to confusion and litigation. In addition, certain accessory uses to agricultural activities, such as agri-tourism activities, has resulted in neighbor complaints. A previous attempt to clarify the county’s definitions related to agriculture involved a detailed review of the codes from 34 of the 39 Washington counties. For this analysis, however, a review of definitions related to agriculture in the Revised Code of Washington (RCW) and Washington Administrative Code (WAC) was conducted, and these are attached verbatim hereto. The following table provides a framework of the state’s definitions related to agriculture contained in the Growth Management Act and the Shoreline Management Act.

2. Framework of definitions

	Agricultural Activities	Accessory uses (presumably those uses or developments that do not meet the definition of agricultural activities)	Agricultural accessory uses	Non-agricultural accessory uses
<p>Agricultural land GMA at RCW 36.70A.040(3): County shall designate agricultural lands and adopt development regulations conserving these designated agricultural lands. SMA: Agricultural land means those specific land areas on which agriculture activities are conducted.</p>	<p>SMA at RCW 90.58.065(2)(a) & GMA at RCW 36.70A.560(3): Producing, breeding, or increasing agricultural products*; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment*; maintaining, repairing, and replacing agricultural facilities*; provided that the replacement facility is no closer to the [SMA says "shoreline"; GMA says "critical areas"] than the original facility; and maintaining agricultural lands under production or cultivation.</p>	<p>GMA from RCW 36.70A.177: Must support, promote, or sustain agricultural operations and production; Must be located, designed, and operated so as to not interfere with, and must support the continuation of, the overall agricultural use of the property and neighboring properties. Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection in areas designated as agricultural lands of long-term commercial significance. This section shall not be interpreted to limit agricultural production on designated agricultural lands. SMA at WAC 173-26-241(3)(a)(v): Development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to nonagricultural uses, shall be consistent with the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.</p>	<p>GMA at 36.70A.177(3)(b)(i): including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; Note, according to SMA at RCW 90.58.065(2)(a) & GMA at RCW 36.70A.560(3), "agricultural activities" is specifically limited to maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities. Being excluded from the definition of "agricultural activities," new agricultural equipment and new agricultural facilities should be considered accessory uses.</p>	<p>GMA: as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses</p>

SMA at 90.58.065(2)(b): ***Agricultural products** includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

SMA at 90.58.065(c): ***Agricultural equipment** and **agricultural facilities** includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables;

	Agricultural Activities	Accessory uses (presumably those uses or developments that do not meet the definition of agricultural activities)
<p>Rural Lands GMA at RCW 36.70A.070(5): Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.</p>	<p>GMA at RCW 36.70A.070(5)(b). The rural element shall permit rural development, forestry, and agriculture in rural areas.</p> <p>RCW 36.70A.030(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.</p>	<p>Developments that do not meet the definition of agricultural activities are presumably considered accessory uses. The GMA at CCC 36.70A.070(5)(b) provides that the rural element shall permit "agriculture" in rural areas, but does not provide the same for "accessory uses."</p> <p>Under the County's Code at Title 33 CCC, accessory uses would be permitted if:</p> <ul style="list-style-type: none"> ▪ pre-existing non-conforming, or ▪ Allowed under the relevant rural zoning designation, or ▪ pursuant to a CUP, where one is required. <p>SMA at WAC 173-26-241(3)(a)(v): Requires provisions for new agricultural activities to assure that:</p> <p>(A) Specific uses and developments in support of agricultural use are consistent with the environment designation in which the land is located.</p> <p>(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values. Measures appropriate to meet these requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220 (5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agencies necessary to preserve the ecological functions and qualities of the shoreline environment.</p> <p>GMA at RCW 36.70A.030 (15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:</p> <p>(a) In which open space, the natural landscape, and vegetation predominate over the built environment;</p> <p>(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;</p> <p>(c) That provide visual landscapes that are traditionally found in rural areas and communities;</p> <p>(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;</p> <p>(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;</p> <p>(f) That generally do not require the extension of urban governmental services; and</p> <p>(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.</p> <p>RCW 36.70A.170(5)(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:</p> <p>(i) Containing or otherwise controlling rural development;</p> <p>(ii) Assuring visual compatibility of rural development with the surrounding rural area;</p> <p>(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;</p> <p>(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and</p> <p>(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.</p>

3. Legislative history: Review of the legislative history regarding these definitions yielded the following:

In 1995 the legislature enacted environmental regulatory reform legislation that implemented recommendations of the Governor's Task Force on Regulatory Reform. The legislation added the goals and policies of the SMA as an additional goal to the 13 planning goals of the GMA. Furthermore, the goals and policies of a master program required by the SMA were deemed an element of a GMA jurisdiction's comprehensive plan.

In 2002, the legislature added the definitions of "agricultural activities," "agricultural products," "agricultural equipment," "agricultural facilities," and "agricultural land" to the SMA with the following notation regarding the change contained in the Final Bill Report ESHB 2305:

"Provisions regarding agricultural activities on agricultural lands are added to the Shoreline Management Act (SMA) to govern amendment or adoption of both shoreline master program guidelines by the Department of Ecology (DOE) and shoreline master programs by local governments. The DOE's state shoreline master program guidelines and the local shoreline master programs based on those guidelines may not require modification of or limit agricultural activities occurring on agricultural lands. Local shoreline master programs for jurisdictions in which agricultural activities occur, however, must address the following activities: -

- new agricultural activities on land not meeting the SMA's definition of agricultural land--;
- conversion of agricultural lands to other uses; and
- development not meeting the SMA's definition of agricultural activities.--

The agricultural activities provisions do not limit or change the terms of the statutory substantial development definition exception. These new provisions apply only to the SMA and do not affect other local government authority."

In 2006, the legislature amended the GMA provisions regarding accessory uses with the following notation regarding the change contained in the Final Bill Report SHB 2917:

"Counties and cities are provided with greater flexibility with respect to the implementation of agricultural zoning schemes governing the use of agricultural lands of long-term commercial significance. This increased flexibility is accomplished through the removal of many specified restrictions on accessory uses and replacing them with more permissive general guidelines governing the types of accessory uses that may be conducted on designated agricultural lands. An example of this shift is the elimination of the requirement that accessory uses be functionally related to the growing of crops or raising of animals and replacing it with a more general standard requiring that such uses support the continuation of the agricultural use of the property and neighboring properties. In addition, the guidelines created by the act explicitly distinguish "agricultural accessory uses" from "nonagricultural accessory uses."

Authorized "agricultural accessory uses" may include, but are not limited to, the following:

- the storage, distribution, and marketing of regional agricultural products; and
- the production, marketing, and distribution of value-added agricultural products, including the support services necessary to facilitate these activities.

"Nonagricultural accessory uses" are permitted provided they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site.

However, nonagricultural accessory uses and related development may not: (1) be located outside the general area already developed for buildings and residential uses; or (2) convert more than one acre of agricultural land to nonagricultural uses.

The list of specifically authorized types of commercial or retail accessory uses is eliminated.

In 2007, the legislature placed a moratorium on the ability of local jurisdictions to their critical areas ordinances "as they specifically apply to agricultural activities" until July 1, 2010, for the purpose of allowing the Ruckelshaus Center to attempt to achieve "agreement among participating stakeholders and to develop a coalition that can be used to support agreed upon changes or new approaches to protecting critical areas" with stakeholders to "examine ways to modify statutory provisions to ensure that regulatory constraints on agricultural activities are used as a last resort..." The two GMA sections relating to this legislative action included the same definition for "agricultural activities" as was added to the SMA in 2002.

The Final Bill Report SSB 5248 relating to this legislative action contained the following added notation regarding the 2006 change to the accessory uses:

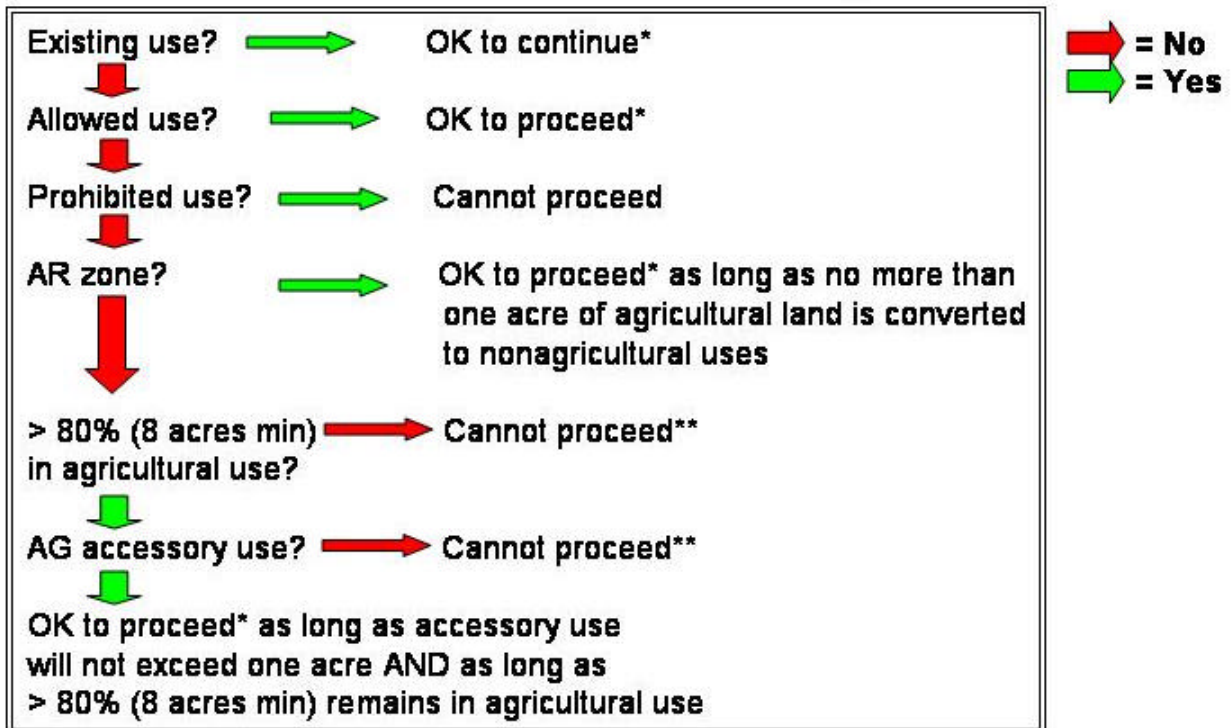
“Generally, agricultural lands are either designated as "agricultural lands of long-term commercial significance" or as "rural" lands. Agricultural lands of long-term commercial significance are those that are not already characterized by urban growth and have long-term significance for the commercial production of food or other agricultural products. With a few exceptions, such as the one acre accessory use provision enacted in 2006, conversion of this category of agricultural land to non-agricultural uses is not allowed. The restrictions on the conversion of agricultural lands in areas zoned as rural are less and depend on the local ordinance.”

4. Analysis The Legislature has used the following distinctions when it comes to agricultural lands and accessory activities:

- Designated agricultural resource lands
- Agricultural activities on lands NOT designated as agricultural resource lands
- Existing agricultural activities
- New agricultural activities
- Agricultural accessory uses
- Non-agricultural accessory uses

The following flow chart attempts to reflect the currently existing legislative definitions and related history as to existing and new agricultural and accessory activities, as well as the County’s authority to designate zoning district, specify Allowed and Prohibited uses, and acknowledge pre-existing non-conforming uses.

Flowchart to determine whether use can proceed*



*subject to all relevant federal, state, and local regulations

**may be able to proceed according to terms of a conditional use permit

Allowing accessory uses on lands engaged in agricultural activities allows owners more flexibility to supplement their income, and is thus consistent with the goal of encouraging the continuation of agricultural

activities, especially on lands designated as agricultural resource lands. Allowing both agricultural and non-agricultural accessory uses, within statutory limits, is thus appropriate on AR zoned lands.

The introduction of new accessory uses in rural lands involves balancing the goal of encouraging agricultural activities with the legitimate neighbor expectations that the rural lands provide a rural setting free from commercial and industrial uses. This balance is achieved by limiting new accessory uses on rural lands to agricultural accessory uses only, and then only on lands with at least 80% (or 8 acres min) involved in agricultural activities. This figure is meant to reflect significant investment in agricultural activities thus minimizing the possibility that involvement in limited agricultural activities is used for the purpose of avoiding zoning code provisions, as well as ensuring the retention of rural character.

5. Recommendations:

- A) **Amend/add definitions in the County's Zoning Code relating to agriculture and farm-based accessory uses and activities as follows**
- a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation."
 - b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products.
 - c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables.
 - d) "Farm-based accessory uses" means those uses and activities that do not meet the definition of "agricultural activities" but that do support, promote, or sustain agricultural activities.
- B) **New Chapter to Zoning code.** A new Chapter would specify "farm-based accessory use standards," with the following sections:
- a) **Farm-based accessory uses** Farm-based accessory uses may include:
 - i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities.
 - ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.
 - b) **Qualifying for farm-based accessory uses.**
 - i) Properties located in the AR zone qualify for both agricultural and nonagricultural accessory uses and activities, subject to all relevant federal, state, and local regulations, including the standards of this Chapter.
 - ii) Properties located in zones other than the AR zone qualify for agricultural accessory (but not nonagricultural accessory) uses and activities IF:
 - (1) at least 80% of the property is involved in agricultural activity (but no less than eight acres);

- (2) The accessory use or activity will not exceed an acre nor reduce the amount of agricultural activity to less than 80% of the property;
 - (3) The accessory use or activity is not Prohibited in the underlying zoning designation;
 - (4) The accessory use or activity complies with all relevant federal, state, and local regulations, including the standards of this Chapter; AND
 - (5) The accessory use or activity continues only as long as at least 80% of the property (but no less than eight acres) remains in agricultural activity.
- c) **Minimum performance standards for farm-based accessory uses(both agricultural and non-agricultural accessory uses and activities).**
- i) Any new buildings, parking, or supportive uses shall not be located outside the general area already developed for buildings and residential uses, and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.
 - ii) Any action that is subject to review under SEPA is subject to review by the Administrator to ensure that the accessory use or activity is, or remains, consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site.
 - iii) New buildings or new portions of existing buildings that are open to the general public (either permanently or on a seasonal or temporary basis) must either be exempt from or meet the Clallam County Building Code.
 - iv) Parking for all customers, visitors and suppliers must be accommodated on site.
 - v) Temporary commercial events (such as festivals, tours, or weddings) that are expected to bring in more than 200 people per location per day must meet the requirements of the “assembly” or “festival” ordinance, as applicable.
 - vi) Overnight accommodations to the general public (not agricultural workers) must meet the requirements of a Bed and Breakfast establishment.
 - vii) Signs shall comply with the requirements of Chapter 33.57 CCC.
 - viii) Accessory uses shall comply with all federal, state, and county regulations including but not limited to building, health, fire, and environmental code regulations.
- C) **Add “farm-based accessory uses” under Allowed uses of all Rural Zones.**
- D) **Amend Zoning Code definitions of the following terms:**
- a) “Grocery store” and “retail store,” to exclude “on-farm retail stands.”
 - b) “Restaurant,” to exclude food service at events.

For example:

Scenario 1 = property of any size in AR zone

Scenario 2 = property of 10 acres in R5 zone, with at least 80% (8 acres) in agricultural activity

Scenario 3 = property of 10 acres in R5 zone, with less than 80% (8 acres) in agricultural activity

AA= Agricultural Activity

Acc= Agricultural Accessory Use

NACC = Nonagricultural Accessory Use

Note , all activities are subject to SEPA, building, environmental, health, etc permits		Scenario 1 AR	Scenario 2 ≥ 8 acres R5	Scenario 3 < 8 acres R5
On-farm retail stands, including the sale of regionally produced agricultural products	Maintain, repair, or replace = AA	Yes	Yes	Yes
	New = Acc	Yes	Grocery and retail stores are prohibited in R5 zones; add distinction.	No
Construction of greenhouses and other farm buildings for retail and/or wholesale agricultural production	Maintain, repair, or replace = AA	Yes	Yes	Yes
	New = Acc	Yes	Yes	Wholesale (OK) Retail (CUP)
On farm processing of agricultural products	Acc	Yes	Yes	Home enterprise (OK) Home-based industry (CUP)

Note , all activities are subject to SEPA, building, environmental, health, etc permits		Scenario 1 AR	Scenario 2 ≥ 8 acres R5	Scenario 3 < 8 acres R5
Making and selling compost	Needs further analysis (subject to relevant RCW and WAC provisions)			
Farm restaurants	NACC	Yes	No (restaurants are prohibited in R5 zone)	No
Agri-tourism activities	Acc (subject to assembly/festival permits)	Yes	Yes	Yes
Campgrounds and camping facilities	NACC	Yes	Yes (but not RV parks which are prohibited in R5 zone)	CUP (but not RV parks)
Permanent and temporary housing for farm workers	Maintain, repair, or replace = AA	Yes	Yes	Yes
	New = Acc	Yes	Yes	If qualify for ADU
Construction, repair and maintenance of farm machinery	Maintain, repair, or replace = AA	Yes	Yes	Yes
	Repair (commercial) = Acc	Yes	No (vehicular repair prohibited in R5 zone)	No
Temporary educational seminars	Agriculturally related = Acc	Yes	Yes (if less than 50 students, otherwise prohibited in R5 zone)	Yes (if less than 50 students, otherwise prohibited in R5 zone)
	Not agriculturally related = NACC	Yes	Yes (if less than 50 students, otherwise prohibited in R5 zone)	CUP (if less than 50 students)
Bed and breakfast establishment	NACC	Yes	Yes	Yes

From Zoning Code definitions:

(35) “Grocery store” means a structure devoted primarily to the sale of staple foodstuffs and household commodities.

(40) “Home-based industry” means a revenue generating enterprise which is located on a residential parcel and which generates or involves outdoor activity and/or outdoor storage of equipment or supplies.

(41) “Home enterprise” means a revenue generating enterprise which is conducted entirely within a dwelling and/or inside other legally existing buildings on a residential property and is subordinate to and incidental to the residential use of the dwelling.

6. Conclusion. Using the statutory definitions for agricultural and accessory activities, the County’s Zoning Code could be amended to expand and clarify the use of accessory activities on lands in agricultural use, which would assist those involved in agricultural activities in retaining their lands in agricultural use.

Attachment A. Definitions related to Agricultural Activities

1) The Growth Management Act:

RCW 36.70A.030(2), the Growth Management Act defines "Agricultural land" as "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production." At RCW 36.70A.030(1), the Growth Management Act defines "Long-term commercial significance" to include "the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land."

36.70A.060. Natural resource lands and critical areas — Development regulations. (a) Except as provided in *RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

RCW 36.70A.177, Agricultural lands — Innovative zoning techniques — Accessory uses.

(1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;

(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and

(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

(3) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

(a) Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter;

(b) Accessory uses may include:

(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

(ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses; and

(c) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection (3) in areas designated as agricultural lands of long-term commercial significance.

(4) This section shall not be interpreted to limit agricultural production on designated agricultural lands.

RCW 36.70A.560, for the limited purpose of that section and RCW 36.70A.5601 (noted as follows: "The legislature, therefore, intends this act, the temporary delays it establishes for amending or adopting provisions of certain critical area ordinances, and the duties and requirements it prescribes for the William D. Ruckelshaus Center, to be expressions of progress in resolving, harmonizing, and advancing commonly held environmental protection and agricultural viability goals."), "agricultural activities" is described as "agricultural uses and practices currently existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation."

2) The State Shoreline Management Act:

RCW 90.58.065, Application of guidelines and master programs to agricultural activities.

(1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW 90.58.080 shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the *current exception to the definition of substantial development in RCW 90.58.030(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

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

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

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

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

3) Chapter 173-26 WAC, State master program approval/amendment procedures and master program guidelines

WAC 173-26-020, Definitions

(3)(d) "Agricultural land" means those specific land areas on which agricultural activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

WAC 173-26-241(3)(a), Agriculture.

(i) For the purposes of this section, the terms agricultural activities, agricultural products, agricultural equipment and facilities and agricultural land shall have the specific meanings as provided in WAC 173-26-020.

(ii) Master programs shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

(iii) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit is required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030 (3)(e)(iv).

(iv) Master programs shall use definitions consistent with the definitions found in WAC 173-26-020(3).

(v) New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. Master programs shall include provisions for new agricultural activities to assure that:

(A) Specific uses and developments in support of agricultural use are consistent with the environment designation in which the land is located.

(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values.

Measures appropriate to meet these requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220 (5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agencies necessary to preserve the ecological functions and qualities of the shoreline environment.

(vi) Master programs shall include provisions to assure that development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to nonagricultural uses, shall be consistent with the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.

- 4) **The State Nuisances Act:** The relevant portions of this act, set forth verbatim below, were last updated in 2007, accompanied by the following statutory note: "The legislature finds that agricultural activities are often subjected to nuisance lawsuits. The legislature also finds that such lawsuits hasten premature conversion of agricultural lands to other uses. The legislature further finds that agricultural activities must be able to adopt new technologies and diversify into new crops and products if the agricultural industry is to survive and agricultural lands are to be conserved. Therefore, the legislature intends to enhance the protection of agricultural activities from nuisance lawsuits, and to further the clear legislative directive of the state growth management act to maintain and enhance the agricultural industry and conserve productive agricultural lands." [2007 c 331 § 1.].

RCW 7.48.300, Agricultural activities and forest practices — Legislative finding and purpose. The legislature finds that agricultural activities conducted on farmland and forest practices in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses and timber production. It is therefore the purpose of RCW 7.48.300 through 7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland and forest practices be protected from nuisance lawsuits.

RCW 7.48.305, Agricultural activities and forest practices — Presumed reasonable and not a nuisance — Exception — Damages. Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity or practice has a substantial adverse effect on public health and safety.

If those agricultural activities and forest practices are undertaken in conformity with all applicable laws and rules, they are presumed to be good agricultural and forest practices not adversely affecting the public health and safety for purposes of this section and RCW 7.48.300. An agricultural activity that is in conformity with such laws and rules shall not be restricted as to the hours of the day or day or days of the

week during which it may be conducted.

Nothing in this section shall affect or impair any right to sue for damages.

RCW 7.48.310, Agricultural activities and forest practices — Definitions. As used in RCW 7.48.305:

(1) "Agricultural activity" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses; and conversion from one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

(2) "Farm" means the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products.

(3) "Farmland" means land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquacultural, or other farm products.

(4) "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grasses, trees, freshwater fish and fish products, apiaries and apiary products, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

(5) "Forest practice" means "forest practice" as defined in RCW 76.09.020.

RCW 7.48.315. Agricultural activities and forest practices — Recovering lawsuit costs — Farmers.

(1) A farmer who prevails in any action, claim, or counterclaim alleging that agricultural activity on a farm constitutes a nuisance may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(2) A farmer who prevails in any action, claim, or counterclaim (a) based on an allegation that agricultural activity on a farm is in violation of specified laws, rules, or ordinances, (b) where such activity is not found to be in violation of the specified laws, rules, or ordinances, and (c) actual damages are realized by the farm as a result of the action, claim, or counterclaim, may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(3) The costs and expenses that may be recovered according to subsection (1) or (2) of this section include actual damages and reasonable attorneys' fees and costs. For the purposes of this subsection, "actual damages" include lost revenue and the replacement value of crops or livestock damaged or unable to be harvested or sold as a result of the action, claim, or counterclaim.

(4) In addition to any sums recovered according to subsection (1) or (2) of this section, a farmer may recover exemplary damages if a court finds that the action, claim, or counterclaim was initiated maliciously and without probable cause.

(5) A farmer may not recover the costs and expenses authorized in this section from a state or local agency that investigates or pursues an enforcement action pursuant to an allegation as specified in subsection (2) of this section.

RCW 7.48.320. Agricultural activities and forest practices — Recovering costs to investigate complaints — State and local agencies. A state or local agency required to investigate a complaint alleging agricultural activity on a farm is in violation of specified laws, rules, or ordinances and where such activity is not found to be in violation of such specified laws, rules, or ordinances may recover its full investigative costs and expenses if a court determines that the complaint was initiated maliciously and without probable cause.

RCW 84.34, Open space, agricultural, timber lands — current use — conservation futures

RCW 84.34.020, Definitions. As used in this chapter, unless a different meaning is required by the context:

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

Parcels of land described in (b)(i)(A) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands"; or

(e) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes.