



PLANNING & DEVELOPMENT SERVICES

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Department Responses to Comments on Proposed Ag-CAO Amendments

November 10, 2011 (updated November 11, 2011)

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All comments are available on the project webpage at www.skagitcounty.net/agcao.

Responses

Comment Letter #2, page 2:

Expanding the definition of ongoing agriculture to include all lands, not just Ag-NRL and RRc-NRL lands would affect lands currently protected by the County's Critical Areas Ordinance for all other lands, which the Tribe and the County collaboratively developed to protect salmon and salmon habitat.

Response:

This comment refers to the bracketed sentence in the definition of "ongoing agriculture" on page 2, included as an optional provision for Planning Commission consideration because the concept was mentioned at the Planning Commission workshop on October 4. The provision is bracketed because the Department does not actually recommend modification of the definition of ongoing agriculture to expand the scope of the Ag-CAO to all lands. Because the standard CAO, which requires buffers, currently applies

to agriculture in other zones, and because the Ag-CAO does not allow the removal of existing buffers, agriculture would gain very little from expanding the existing scope of the definition.

Comment letter #2, page 3:

County should not delete the requirement that the individual assisting the farmer in developing a farm plan, whether called a “qualified expert” or “qualified professional,” have “substantial demonstrated experience as a practicing specialist.

Response:

The proposal changes “qualified expert” to “qualified professional” for consistency with the rest of the CAO, which changed from “qualified expert” to “qualified professional” during its last update. The term is used in the definition of “Best management practices, critical areas” and in the enforcement chapter of the code. The term “Best management practices” is used only once in the Ag-CAO (SCC 14.24.120(4)(d)(i)), and the Department believes this change is worthwhile because it simplifies the text, but is otherwise inconsequential. Future changes to the enforcement chapter may eliminate other uses of the term.

The County and the legislation recognizes the problem of attempting to use farm plans as an enforcement tool, which is why the County’s Ag-CAO establishes bright-line Watercourse Protection Measures and the legislation uses the concept of an “individual stewardship plan.”

Comment letter #2, page 3:

County should not delete the language requiring that BMPs within the farm plans must be developed to meet the “no harm or degradation” standard on a site-specific basis.

Response:

We believe this comment refers to the proposed deletion of paragraph (c) at the bottom of page 7. The substance of this paragraph exists twice in the Ag-CAO. The proposal eliminates this instance of the text to eliminate redundancy.

Comment letter #2, page 3:

The change from meeting water quality standards to meeting the state water pollution control laws weakens the ordinance and reduces the likelihood even further of enforcement.

Response:

The Department disagrees. This change refers to SCC 14.24.120(3)(a)(i), which currently requires agricultural activities to “meet the state water quality standards” in order to be considered meeting the “no harm or degradation standard.” State water quality standards are standards for the quality of water. They apply to a *waterbody*. They cannot be applied to an agricultural activity or landowner. The current construction doesn’t make sense, and is therefore impossible to enforce. The Department believes the intent of this provision was to require agricultural activities to comply with the water pollution control laws, so the proposal changes the language to reflect that intent. Finally, paragraph (1)(a)(i) of the proposal retains “water quality standards” as one of the functions and values that the ordinance is attempting to protect.

Comment letter #2, page 3:

The new language referring to baseline and natural conditions further weakens whatever protection the Ag-CAO had provided before.

Response:

We believe this comment refers to the additional text at the bottom of page 4 of the proposal. As indicated in the bubble comment, this text is already present elsewhere in the Ag-CAO. Moreover, reference to baseline and natural conditions is already present in the state water quality standards.

Comment letter #2, page 3:

Reliance upon agreements formulated under the Drainage-Fish Initiative or Tidegate-Fish Initiative is insufficient to protect fish and wildlife habitat. WA Dept of Fish and Wildlife has no authority to enforce water quality violations.

Response:

The proposal only relies on DFI and TFI agreements in sub-paragraph (4)(d), which describes operation and maintenance of public and private agricultural drainage infrastructure, i.e. digging and maintaining drainage ditches. Other sub-paragraphs that deal with agricultural runoff apply regardless of whether a DFI or TFI agreement is in place.

Comment letter #2, page 3:

Enforcement of Ag-CAO will be impossible without a robust monitoring program.

Response:

The Department believes that the current water quality and salmon habitat monitoring programs, which were developed to evaluate whether the Ag-CAO as a regulatory scheme was protective of critical areas, are not properly tailored to pursue enforcement of the Ag-CAO watercourse protection measures against individual landowners. The Department believes an alternative enforcement program, like that evolving as part of the Clean Samish Initiative, will be more effective for dealing with individual site-specific compliance issues.

Comment letter #6:

There is no substantive difference between the proposed Stewardship Program and what has been in place now for many years.

Response:

By itself, enrollment in the Voluntary Stewardship Program does not establish a work plan for County efforts toward critical areas protection. The Watershed Group will develop that work plan after enrollment. The work plan is the document that should properly be compared to the prior processes the commenter contends have failed. The Department agrees that the Voluntary Stewardship Program will not yield positive results unless the community makes a serious and concerted effort to participate and work toward actual protection of critical areas.

Comment letter #6:

There is no additional funding for the Voluntary Stewardship Program.

Response:

Under the legislation, if counties do not receive adequate funding for the Voluntary Stewardship Program, the program will end and all counties will return to traditional GMA rules requiring protection of critical areas through regulations. The State Conservation Commission expects to be able to provide more than \$100,000 per year to each county that participates, and expects funded federal programs to be altered to assist the program. Skagit County also expects to designate its own funds to operation of the program.

Comment letter #6:

By far the most significant agricultural pollution of water...comes from large farm animals grazing next to ditches, streams, lakes, and rivers.

Response:

Skagit County's current Ag-CAO recognizes that livestock grazing near streams is a source of pollution, and limits access to watercourses to the time necessary for watering or grazing.

Comment letter #6:

County should adopt ordinance ensuring that livestock should be fenced well away from roadside and drainage ditches, streams, lakes, etc., and prevent occupied pastures from being direct-ditched into our waters.

Response:

Under the Voluntary Stewardship Program, the Watershed Group could recommend additional changes to the Ag-CAO as part of the Watershed Work Plan.

Comment letter #7, page 1:

Whatcom, Island, Snohomish counties all have opted out.

Response:

The legislation creates an opt-in mechanism for participation in the Voluntary Stewardship Program. Counties do not "opt out." To date, the Department is aware of one other County that has opted in—Lewis County. We also understand that Island County is considering opting in.