

An Overview of the Voluntary Stewardship Program and GMA / CAO Case Law Elements

2014 Farmland Preservation in Washington - Farmland Preservation Opportunities and Shared Collaboration

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VSP - Background

- 2006 – Initiative 933 addressing taking of agricultural lands due to regulations. Fails by 60%.
- 2007 - Legislature charged the Ruckelshaus Center to examine the conflict between protecting agricultural land and protecting critical areas in local ordinances adopted under the GMA.
- Ruckelshaus Center - VSP was the result of the facilitated stakeholder discussions.
- Result of negotiations is the VSP.
- 2011 – Legislature passes and Governor signs. No funding

What the Statute Does

- The voluntary stewardship program is created at the Conservation Commission.
- The program is an alternative approach for counties to protect critical areas on agricultural lands.
- Counties are given two options:
 - Opt-in to the voluntary stewardship program, or
 - Continue under existing law in GMA to protect critical areas on agricultural lands.
- 28 of 39 counties opted-in.

Opting-in to the Program

- Counties were required to adopt an ordinance or resolution opting-in to the program.
- Before adopting the resolution, the county must:
 - Confer with tribes, environmental and agricultural interests; and
 - Provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations.
- The ordinance or resolution must:
 - Elect to have the county participate in the program;
 - Identify the watersheds that will participate in the program; and
 - Nominate watersheds for consideration by the Commission as state priority watersheds.

Opting-in to the Program

- In identifying priority watersheds, a county must consider:
 - The role of farming within the watershed including the number and acreage, economic value, and risk of conversion of farmland;
 - Importance of salmonid resources in the watershed;
 - An evaluation of the biological diversity of wildlife species and habitats;
 - Presence of leadership within the watershed that is representative and inclusive of the interests in the watershed;
 - Integration of regional watershed strategies, including the availability of a data and scientific review structure related to all types of critical areas;
 - Presence of a local watershed group willing and capable of overseeing a successful program; and
 - Overall likelihood of completing a successful program.

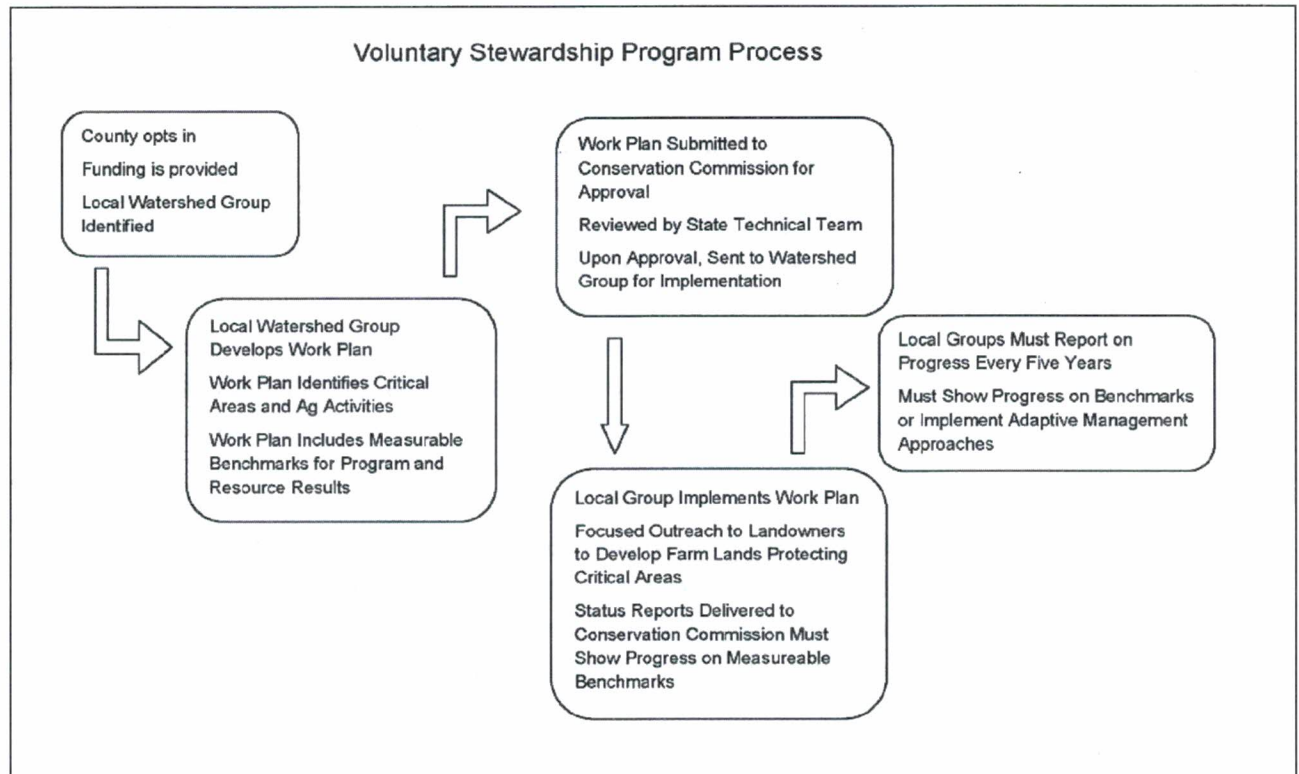
Opting-in to the Program

- The program applies to all unincorporated property upon which agricultural activities occur within a participating watershed.
- For those areas of a county NOT included in the designated priority watershed, the county must implement existing GMA critical areas requirements.
- “Watershed” means a WRIA, salmon recovery planning area, or sub-basin as determined by a county.
- Within 60 days of funds being available to a county to implement the program, the county must designate a watershed group and entity to administer funds for each watershed.
- The county must confer with tribes and stakeholders before designating the watershed group.

Funding

- Counties opting-in are eligible for a share of the funding made available to implement the program, subject to funding being available from the state.
- Not required to implement the program in the participating watershed until adequate funding for the program in that watershed is provided to the county.
- Current funding for Thurston County for program development and administration:
 - \$150,000 in year 1
 - \$125,000 in year 2
 - Will seek continuing funding for implementation

Overview of the Process



Designation of Watershed Group

- Within 60 days of the initial receipt of funds, a county must designate a watershed group and an entity to administer funds for each watershed for which funding has been provided.
- A county must confer with tribes and interested stakeholders before designating or establishing a watershed group.

Role of Watershed Group

- The designated watershed group must develop a work plan to protect critical areas while maintaining the viability of agriculture in the watershed.
- The work plan must include goals and benchmarks for the protection and enhancement of critical areas.
- In developing and implementing the work plan, the watershed group must:
 - a) Review and incorporate applicable water quality, watershed management, farmland protection, and species recovery data and plans;
 - b) Seek input from tribes, agencies, and stakeholders;
 - c) Develop goals for participation by agricultural operators necessary to meet the protection and enhancement benchmarks of the work plan;

- d) Ensure outreach and technical assistance is provided to agricultural operators in the watershed;
- e) Create measurable benchmarks that, within 10 years after receipt of funding, are designed to result in the protection and enhancement of critical areas functions and values through voluntary, incentive-based measures;
- f) Designate the entity that will provide technical assistance;
- g) Work with the entity providing technical assistance to ensure individual stewardship plans contribute to the goals and benchmarks of the work plan;
- h) Incorporate into the work plan existing development regulations relied upon to achieve the goals and benchmarks for protection;
- i) Establish baseline monitoring for: (i) participation and implementation of the voluntary stewardship plans and projects; (ii) stewardship activities; and (iii) the effects on critical areas and agriculture relevant to the protection and enhancement benchmarks developed for the watershed;
- j) Conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans and accomplishments to the county and the Commission within 60 days after the end of each biennium;
- k) Assist state agencies in their monitoring programs; and
- l) Satisfy any other reporting requirements of the program.

Approval of Work Plan

- The work plan is submitted to the director of the SCC for approval.
- The director submits the work plan to a technical panel for review. Panel has 45 days to review and assess the plan.
- The technical panel is to review the work plan and assess whether the plan, in conjunction with other plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.
- If the technical panel determines the plan will accomplish its goals, the SCC director must approve the plan.
- If the technical panel determines the plan will not accomplish its goals, the SCC director must advise the watershed group the reasons for the disapproval.

Technical Panel

"Technical panel" means the directors or director designees of the following agencies:

- WDFW
- WSDA
- Ecology
- WSCC

Statewide Advisory Panel

SCC is required to appoint the panel consisting of a specified composition:

- Two Environmental
- Two Agricultural
- Two County
- Two Tribes

Statewide Advisory Panel

- The Advisory Panel will be evaluating the guidance material developed by the Technical Panel.
- The Advisory Panel is also working on a set of criteria for the Commission to consider if we are able to get only a subset of the full program funding.
- The Panel will meet with members of the Technical Panel and representatives of Thurston and Chelan.
- Once a work plan is developed and submitted for approval, if the technical panel can't agree, goes to the Advisory Panel.

Relationship to GMA

- Legislation adds new sections to RCW 36.70A, the GMA statute.
- If the participating watershed is achieving the benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations as they apply to agricultural activities in the county.
- If the participating watershed is NOT achieving the benchmarks and goals for protection, then the county must review and if necessary revise development regulations in the area consistent with the GMA.

Key GMA CAO Ag Elements

For GMA counties (not VSP counties).

- Key case for GMA / CAO and ag lands – Swinomish v. Western WA GMHB, WA Supreme Court 2007
- Holdings addressed:
 - “No Harm” Standard
 - Mandatory Buffers
 - Monitoring, Adaptive Management, and Benchmarks

Issues relating to farm plans – Disclosure and Confidentiality

Swinomish v. Western WA Growth Management Hearings Board, WA Supreme Court 2007 (“Skagit Decision”)

“No Harm” Standard

- The legislature has not imposed a duty on local governments to enhance critical areas, although it does permit it.
- Without firm instruction from the legislature to require enhancement of critical areas, we will not impose such a duty.
- The “no harm” standard, in short, protects critical areas by maintaining existing conditions.

Mandatory Buffers

- Whether GMA requires the county to establish mandatory buffers along streams and rivers on the upland strip of land.
- The GMA does not require the county to follow BAS; rather, it is required to “include” BAS in its record. RCW 36.70A.172(1).
- The county may depart from BAS if it provides a reasoned justification for such a departure.
- A requirement to develop buffers would impose an obligation on farmers to replant areas that were lawfully cleared in the past, which is the equivalent of enhancement. Without a duty to enhance being imposed by the GMA, however, we cannot require farmers within Skagit County to replant what was long ago plucked up. The county need not impose a requirement that farmers establish riparian buffers.

Monitoring, Adaptive Management, and Benchmarks

- The Board determined that the county’s revised ordinance failed to bring its monitoring and adaptive management processes into compliance with the GMA.
- The monitoring process lacked the necessary benchmarks for comparing the data it gathered.
- Even if the monitoring process was adequate in detecting degradation of critical areas, did not have an effective adaptive management process that was capable of responding to the detected harm.
- The Board held that the county could not sufficiently analyze the data because its monitoring program lacked appropriate benchmarks to compare data as it was collected.
- The Supreme Court stated a benchmark is needed to compare data as it is recorded. Data that cannot be analyzed, via comparison to the benchmark, is essentially meaningless because a harm cannot be detected unless there is a benchmark by which to define a harm in the first place.
- The Supreme Court was not persuaded by the county’s argument that in the absence of an adequate benchmark, it does the “next best thing” by proposing to monitor current conditions in an effort to develop a benchmark in the future.
- In short, under GMA regulations, local governments must either be certain that their critical areas regulations will prevent harm or be prepared to recognize and respond effectively to any unforeseen harm that arises. In this respect, adaptive management is the second part of the process initiated by adequate monitoring.

- Without a compliant monitoring system, the adaptive management program cannot be compliant as the county cannot adequately adapt its management of critical areas if it is unable to adequately detect changes to them.

Issues Relating to Farm Plans

The VSP and several GMA jurisdictions rely on “farm plans” for landowner compliance.

VSP calls them “stewardship plans”

Disclosure of Plans

- Public Records Act RCW 42.56
 - Farm Plans: RCW 42.56.270(17)(a) and (b)
The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:
(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;
(b) Farm plans developed under chapter [90.48](#) RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW [42.56.610](#) and [90.64.190](#)
 - Farm Plans for dairies, AFOs and CAFOs:
 - RCW 42.56.610 (same wording as RCW 90.64.190, which applies only to dairies)

RCW 42.56.610 “Range Rule”

The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies

§1619 of 2008 Farm Bill

- Applies to USDA “cooperators” (i.e. CDs)
- Without landowner consent to full disclosure, §1619 prohibits disclosure of:
 - information provided by an agricultural producer or owner of ag lands
 - that concerns ag operations, farming, conservation practices, or the land itself (including GIS info)
- **IF** (and only if) that information was provided so that an owner can participate in a USDA program that provides a **benefit** to a landowner (such as a loan, subsidy, grant or other form of payment or relief)
- Does not apply if the info was required to be provided as a condition of legally engaging in agricultural operations

For more information, contact:

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