

## Voluntary Stewardship Program

### Joint Technical Panel & Statewide Advisory Committee Meeting

Friday, August 7, 2020

9:00 a.m. – 3:00 p.m.

Facilitator – Bill Eller, VSP Coordinator, WSCC

**MEETING LOCATION:**

Webinar / teleconference only

#### Joint VSP Technical Panel & SAC Meeting

**Attendees:** Alex Case-Cohen; Amanda Barg; Amy Martin; Barbara Adkins; Benjamin Tindall; Bob Amrine; Bradley Johnson; Brandon Roozen; Brian Cochrane; Charissa Waters; Christina Chaput; Elizabeth Jackson; Gary JONES; Graham Simon; Jennifer Nelson; John Stuhlmiller; John Kliem; Kelly McLain; Kelly Verd; Kenna Fosnacht; Lauren Driscoll; Leslie Michel; Levi Keesecker; Marguerite Abplanalp; Mark Taylor; Mary Huff; Michael Tobin; Rick Mraz; Ron Wesen; Ron Shultz; Scott Kuhta; Shawn Ultican; Wes McCart; Zach Van Orsdel

#### Opening Comments, Introductions, Session Objective & Agenda

Bill Eller explains that the bulk of the meeting will be discussing the VSP definition of agricultural activities and how that's applied at the local level within the counties through land use decisions.

Charissa Waters from Thurston County will be presenting later on. The document that she will be presenting was sent this morning via email from Bill Eller to the SAC & TP.

#### VSP Program update – Bill Eller, Ron Shultz, WSCC

##### Legislature / budget

Bill gives a quick summary of SCC FY 21-23 VSP Budget Proposal and explains that it is similar to what was requested for the last biennium. Total request is \$8.4 million. Budget packages are being finalized at the Commission now. Final decisions will be made at the next regular SCC Meeting in September.

Ron Shultz gives further explanation on the process that anytime new funding is requested, decision packages are put together by the agency and submitted to the Office of Financial Management (OFM) in early September. SCC Board will be reviewing the current decision packages at a Special Meeting next week (August 12th) via webinar.

Ron goes into further detail surrounding the current fiscal situation the State is facing due to the COVID-19 pandemic and associated shut-downs. State revenues in the current FY are down roughly \$4.5 - \$4.7 billion. Numbers are expected to be down another \$4.5 billion in the next biennia. All agencies asked to identify 15% cuts for current FY, which SCC has already done and submitted to OFM. You can find this and other agency budget cut plans that have been submitted on OFM's website at [www.ofm.wa.gov](http://www.ofm.wa.gov). A message from the Director of OFM was sent suggesting that agencies had not identified enough cuts, so OFM is looking to identify cuts elsewhere. No word yet on if a Special Session will be held for the Legislature to meet and address any budget shortfall. If no special session is held, discussion will wait for regular session to start in January. All agencies asked to also identify cuts for the 15% reduction proposals for the 21-23 biennial budget. SCC staff are working on identifying those areas now.

Reductions are coming out of State General Funds account, not from the account in which VSP is funded. VSP funded through Public Works Assistance Account. It will be important to share the positive

impacts that VSP is making in the counties in order to get the funding needed, as legislators will be looking carefully at where funding is going and where it is needed.

Commissioners Wes McCart and Ron Wesen and thanked Ron Shultz and SCC staff for the process and efforts being made on the budget request and supported the point that Ron Shultz made about the importance of showing the positive impacts VSP is making locally and throughout the State.

- **5 year report guidance and template update**

SCC Contractor working on template. Close to being released. Template Preview webinar was held last month for TSP providers, VSP counties and work groups. The purpose was to help alleviate fears about what information SCC is looking for in the report. Brian confirmed that he saw a progress update on the template from the contractor yesterday and is close to being ready for release.

SCC intends to utilize the 5 year reports as part of the reporting requirement to the legislature on progress of the program.

- **UW Growth Policy Framework**

Ron gave background on this topic and explains that UW will be convening and facilitating with staff and with other groups in a series of work sessions to examine the forums to WA land use framework, including GMA, FIFIA and related statutes. Work started [July 30<sup>th</sup>] and will go until December 15<sup>th</sup>. Meetings will be 4 hours every other week. Stakeholders involved include Association of Counties, Farm Bureau, and Department of Commerce, who is representing state agencies at the table and keeping them informed of what's happening.

Ron provided details about the first meeting that occurred on July 30<sup>th</sup>. One issue that was brought up was adaptive and inclusive planning at a regional scale. Another was the cycle and dedicated funding for planning. Ron goes on to further explain how the majority of the discussion was centered around the first issue and how it relates to VSP.

Bill takes questions from attendees.

- **Proof of protection needed in the five-year report when a county relies on regulation or the “regulatory backstop” in a VSP work plan to protect one or more critical areas?**

Bill Eller introduces this topic. Says that it came up during the VSP five-year report template and in other venues. The Commission's position is that county work groups that choose to use a regulatory backstop, regulation, or a group of regulations to protect one or more of their critical areas in their work plan need to document that the regulatory backstop, regulations, or group of regulations is actually protecting those critical areas.

John Stuhlmiller says that VSP is an alternative to the CAO and GMA. It is not an alternative to the regulatory process. There is no provision under VSP for additional monitoring for those critical areas protected by a regulatory backstop. Regulations relied on to protect critical areas in a work plan are deemed protective under the ordinance.

Ron Shultz says that he has a different perspective. RCW 36.70A.720 says that the county must protect critical areas. If it relies on .720 (h) for that protection, it must still show that those regulations are protecting the critical areas.

Wes McCart says that the Commission's interpretation and the application of RCW 36.70A.130 (8)(a) would move the Commission toward a regulatory agency.

John Stuhlmiller says that when a CAO is updated, it is updated under the regulation CAO process and can be appealed to the hearings board – it is not updated under VSP.

Ron Shultz agrees in part and disagrees in part. Agrees that the update would go through the normal CAO process. The VSP work group would go back to the county if the regulations are not achieving protection.

John Stuhlmiller describes a scenario where if the county didn't monitor the effectiveness of their CARA regulation and fail out because of that. The county would update the regulation, but doesn't have to update the CARA. That regulation would still be deemed protective.

Ron Shultz agrees. The VSP work group, if they rely on a regulation for protection, content the regulation is protective, but it depends on the context in VSP.

Rick Mraz describes riparian development regulations such as stream buffers. Those are assumed to be valid upon adoption. Projects trigger review. Every five years actions or projects developed under that would be evaluated.

Wes McCart says that the county will review that based on regulation and how that regulation is being applied.

Ron Shultz says that Some counties choose to use regulation to protect critical areas. The county has a duty to know if the regulation is being applied correctly. In VSP, counties must monitor and prove.

Rick Mraz says that actions taken under a regulation should be documented and review projects or applications submitted in response to that.

John Stuhlmiller says that we should have a future conversation about goals and benchmarks for a particular county.

Ron Shultz says that when Skagit County's plan came for approval, it used regulations to protect critical areas, and they were told at that time that they would need to monitor.

- **Presentations and/or examples / scenarios of issues counties have encountered when applying the VSP definition of agricultural activities to land use projects.** Invited: Thurston, Yakima, Grays Harbor

Definition of new Ag – Discussed for a long time, but have not had a chance to have an in depth in-person conversation about this with the counties as soon as we would have liked. 3 counties have been invited today to provide examples of activities or issues that have come up surrounding this subject.

Charissa Waters Presentation. Describes an email that she provided yesterday that had a memo from their local conservation district (Thurston CD (TCD)) that describes issues they have been having with applying the definition of agricultural activities in VSP. She says that they are looking for clarification on how new agriculture is to be treated under VSP. She notes that Thurston County has not seen the memo

from the CD, and they have not done an internal review of it. Provides examples of BMPs implemented by Ag landowners partnering with TCD (TSP). Introduces Marguerite Abplanalp from the TCD. Marguerite provides further explanation and examples.

[Discussion ensues] statements made: Do all BMP's require permits from the county? Inconsistency with the county – depends on square footage. Permitting seems to be a problem.

Wes McCart says that before today's meeting, he spoke with his land services director and from that conversation asks how the project relates back to the CAO? All other codes apply. In a roof and cover example, if VSP applies, permits still apply

Charissa Waters says that new agriculture activities are exempt under the SMA.

Rick Mraz says that where existing and ongoing ag is occurring, changes to those activities that may include new types of ag would be exempt. Asks if the land is being modified, about a change in land use and how the county addresses that.

[The discussion continues using a manure structure as an example]

Scott Kuhta says that the SMA exempted existing and ongoing agriculture.

[The discussion continues around if a new agriculture activity is something that didn't exist before on that land]

Ron Shultz says that VSP doesn't have a temporal element to it. The statute doesn't have it. There are various interpretations on both sides. Is the improvement of a manure site to a manure facility or building mean that is a new agricultural activity? The manure facility is a good example. The critical areas are impacted. Manure storage is an existing activity. The VSP work plan would require demonstrated protection. Some are seeing something that isn't in the statute.

Wes McCart references RCW 90.58.065 (c)(3), second sentence.

[Discussion continues about SMA exemption for ongoing agricultural activities and how it is applied. SMA rules lay out what is agriculture and what is new agriculture. WAC 173-27-040 is referenced. The focus on VSP is the impact to the CA. New agriculture activity in an area where agricultural activities have taken place in the past is ok, but must be accommodated in the VSP work plan at the reach scale, not the landowner / parcel scale.]

Rick Mraz says that if an agricultural activities is on agricultural lands, then the VSP work plan covers that agricultural activities. If an agricultural activities occurs on non-agricultural land, then the CAO covers. A manure structure, if already on agricultural land, it ok to modify it under VSP.

[discussion about prior converted wetlands; what activities are new; and whether a project should be or could be done under VSP; what a county could or should do under VSP and how that fits the watershed basis of VSP]

Ron Shultz asks what the path forward on this is. Policy Advisory 04-19 and direction to counties.

Rick Mraz says that conversion of non-agricultural land to agricultural uses triggers development regulations. If construction of a new building on existing agricultural lands occurs, VSP applies. If construction of a new building on non-agricultural land occurs, that is under the CAO. Conversion triggers the CAO.

Wes McCart and Ron Shultz discuss developing beyond the original agriculture footprint and when happens when entirely new land is converted to agriculture land and the CAO applying at that time. Once agriculture gets on the land, at some point it becomes ongoing and existing agriculture and is in VSP.

Mike Tobin asks about shrub steppe habitat and agriculture land. In Yakima, rangeland is agriculture land. Conversion into a vineyard is under VSP. If a new vineyard has a shop, that would need a permit. New is new and requires a permit. Mike asks about a controlled atmosphere storage building replacing an orchard. Asks about the intent of VSP. An old structure that is updated is in VSP. If it isn't supporting agriculture, it shouldn't be in VSP.

[Discussion of rangeland conversion on the Eastside and pasture to berries on the Westside]

Wes McCart asks at the state level or county level, what is the scope and scale of the area? We should leave this to the counties to decide, not the state.

Mary Huff asks about the review of the five-year VSP report – information matters – need to know the impacts to the critical areas so we can determine if an increase in critical areas protection is needed. The manure or existing agriculture discussion is important. This is the kind of detailed information that is needed in the 5-year report. Practices resulted in increased protection.

Bill Eller says that the purpose of the 5-year report is for counties to assert if they are meeting their goals and benchmarks for protection of critical areas at the watershed scale, not the parcel scale. May get some information on specific practices and projects, but that isn't the purpose of the five-year reports.

Wes McCart says that we've talked about new agriculture, not loss of agriculture. Conversion to something else. Impact to VSP work plans – losing land.

Ron Shultz says the loss of farmland in VSP is an economic activity and not necessarily picked up on the five-year report.

[Discussion of ISP's and how those are being recorded and applied in county work plans to demonstrate meeting goals and benchmarks for protection of critical areas]

Charissa Waters asks if a landowner has an ISP or is implementing NRCS practices.

Wes McCart says that farmers should be doing something positive for VSP. If VSP applies, the work group and county planners and farmers should be having a conversation.

Charissa Waters asks about the purpose of the agriculture activities decision tree.

[Discussion about how ISP's are not defined in the VSP statute and that some counties use ISP's just as a survey to get farmers to participate, while others use ISP's as NRCS farm plans]

Brandon Roozen asks which BMP's apply, and which are desirable versus allowable. New structures should take into account those activities.

**Break 11:31 – 11:37am**

▪ **Discussion continues**

Bill Eller tries to summarize the discussion so far, suggests that Commission staff may want to regroup after this discussion and determine a path forward. Suggests amendments to the agricultural activities decision tree as a result of today's discussion.

Rick Mraz says that Mike Tobin's comments were good. The footprint might not work for all counties. Mike Tobin's example. The agricultural footprint – expanded or change the use.

Ron Shultz says the purpose to build a big building isn't the purpose of VSP; summarizes Rick Mraz's statement from earlier in the meeting.

[Discussion of PA 04-19 and the guidance it provides to counties and whether or not that is adequate]

Mary Huff agrees with Rick Mraz, Ron Shultz, and Wes McCart.

Wes McCart asks if what we are looking at is in the CAO or in a different ordinance.

▪ **Set next joint meeting –**

Mary suggested 24<sup>th</sup> or 25<sup>th</sup>. Others suggested 23<sup>rd</sup>. Mary said it would need to be an afternoon meeting. Consensus for 23<sup>rd</sup> @ 1pm. Brian informed the group that he would be unable to attend meetings in September due to other conflicts.

**12:37 pm - Adjourn**