

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

REGULAR AGENDA REQUEST

TO: Board of County Commissioners
Philip Morley, County Administrator

FROM: Stacie Hoskins, Department of Community Development Planning Manager/Interim Director *SH*
Michelle McConnell, Associate Planner *MM*
Donna Frostholt, Associate Planner *DF*

DATE: January 17, 2012

SUBJECT: Discussion of the Voluntary Stewardship Plan and Possible Adoption of a Resolution to Opt In to the Voluntary Stewardship Plan

STATEMENT OF ISSUE:

The Voluntary Stewardship Program (VSP), as approved by Engrossed Substitute House Bill 1886 (ESHB 1886), allows Jefferson County to participate in an alternative means of protecting critical areas while maintaining the viability of agriculture. ESHB 1886 went into effect on July 22, 2011, and requires local legislative action within six months of the effective date to enroll in the program. If the County opts in, the County must determine which watersheds are to be included in the VSP and must nominate a priority watershed. In order to opt in, the County must comply with Section 4 of ESHB 1886. To show compliance with this section of the bill, the Board of County Commissioners (BoCC) has (1) directed Department of Community Development (DCD) to confer with stakeholders (tribal, environmental, and agricultural interests); (2) directed DCD to provide notice for public participation in the process; and (3) held a public meeting during a 30-day comment period to hear testimony from the public. As part of providing information to the public about the VSP, DCD has set up a webpage on the County website and has prepared an *Informational Paper* that was available to the public at the beginning of the 30-day comment period.

ANALYSIS/STRATEGIC GOALS/PROS and CONS:

The County must make a decision whether to opt in or opt out within six months of the effective date of ESHB 1886, or by January 22, 2012, and legislative action is required under ESHB 1886 to opt in. Therefore, the BoCC must approve a Resolution on January 17, 2012 to enroll Jefferson County in the VSP. The Resolution must identify the watersheds within Jefferson County to include in the VSP and must nominate a priority watershed, *if it wishes to opt in.*

The options for the BoCC to consider in making the opt in/opt out decision have been presented by DCD staff, the County Administrator, and the public. Some of the issues associated with the decision-making process include, but are not limited to: (1) there is not consensus among the public and the stakeholders for opting in or for watershed selection; (2) the funding sources have not yet been identified and the amount of funding is unknown (and may not be adequate to complete a work plan); (3) opting in may allow the County more opportunities to obtain other federal and state funding to find local solutions with stakeholder involvement; (4) the level of effort needed to complete a work plan that can be approved by a technical panel is unknown; (5) the VSP provides greater flexibility for property owners and would be implemented at the watershed level rather than at the site-specific level currently used by DCD; (6) the role of DCD in the

permitting of new agricultural development is unclear at this time (if the County opts in); (7) a means of demonstrating accountability by a Watershed Group to the County has not yet been identified; and (8) an opportunity exists to support local agriculture if the County opts in. Most of these issues about the VSP will not be fully resolved prior to the January 22, 2012 deadline for opting in.

FISCAL IMPACT/COST-BENEFIT ANALYSIS:

Work to date has been completed by funds provided to DCD from the General Fund in support of long-range planning projects. Should the County opt in to the VSP, funds provided by the state would support any DCD involvement associated with preparation of a work plan, *but appear unlikely to cover all county costs.*

RECOMMENDATION:

Staff recommends the BoCC consider the public testimony provided and other information currently available and take formal action to make a decision on whether to opt in to the Voluntary Stewardship Program. If the BoCC chooses to opt in, staff recommends the BoCC approve the attached resolution.

REVIEWED BY:


Philip Morley, County Administrator

1/10/12
Date

STATE OF WASHINGTON
Jefferson County

In the Matter of ESHB 1886 for }
Critical Area Protection--Voluntary }
Stewardship Program }

RESOLUTION NO. _____

WHEREAS, the Washington State Legislature, through Engrossed Substitute House Bill 1886 (ESHB 1886) with an effective date of July 22, 2011, established a Voluntary Stewardship Program (VSP) for the protection of critical areas in areas used for agricultural activities; and

WHEREAS, ESHB 1886 makes participation the VSP "an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060"; and

WHEREAS, to participate in the VSP, the legislative authority must do so by January 22, 2012; and

WHEREAS, ESHB 1886 requires the County to confer with tribal, environmental, and agricultural interests and to provide notice of public participation based on the provisions of RCW 36.70A.035 prior to opting into the VSP; and

WHEREAS, Jefferson County provided notice to the public about a pending County decision regarding participation in VSP in *The Leader* on August 24, 2011; and

WHEREAS, Department of Community Development (DCD) provided an *Informational Paper* for the public about the VSP on August 24, 2011; and

WHEREAS, Jefferson County created a new VSP website on August 24, 2011 to disseminate information to interested stakeholders and the public; and

WHEREAS, DCD met with agricultural stakeholders on September 7, 2011, met with environmental stakeholders on September 14, 2011, and contacted seven tribal representatives to invite them to a tribal stakeholders meeting on September 21, 2011 at which none of the tribes attended but three tribes provided written comments; and

WHEREAS, after due notice, the Board of County Commissioners held a public hearing on September 19, 2011 to hear public testimony and take public comments regarding opting into the VSP, including watershed selection and priority watershed identification; and

WHEREAS, all comments received have been considered by the Board of County Commissioners; and

WHEREAS, it is the understanding of Jefferson County (based on verbal communications with the State Conservation Commission) that if the County opts into the VSP and if the County determines that the amount of funding offered by the State is insufficient to complete tasks associated with developing and implementing a work plan, then Jefferson County has the option of refusing VSP funding (effectively opting out) of the VSP, and would then have to revise the County critical areas ordinance within the timeframes specified in ESHB 1886; and

WHEREAS, the Board of County Commissioners held deliberations on this resolution on January 17, 2012.

NOW THEREFORE BE IT RESOLVED, that the Jefferson County Board of County Commissioners hereby:

1. Elects to opt all Jefferson County watersheds into the Voluntary Stewardship Plan, as established by

- Engrossed Substitute House Bill 1886.
2. Nominates the Quilcene/Snow watershed as the primary watershed (Water Resource Inventory Area 17, or WRIA 17), as delineated on the attached map, for consideration by the State Conservation Commission as a priority watershed.
 3. Elects to have Jefferson County proceed as required by ESHB 1886, to implement the Voluntary Stewardship Program once the Washington State Legislature provides adequate funding.

NOW THEREFORE BE IT BE FURTHER RESOLVED, that the Jefferson County Board of County Commissioners hereby elect to opt into the Voluntary Stewardship Program and adopt the following findings, which correspond to primary watershed selection considerations presented in ESHB 1886, Section 4(4)(a) through (4)(g):

- a. Farming is essential within Jefferson County, much of which is located in the Quilcene/Snow Water Resource Inventory Area (WRIA 17). Of all the land in Jefferson County (and located outside of federal land) that is zoned Agricultural Resource Lands (Prime Agricultural Lands, AP-20; Agricultural Lands of Local Importance, AL-20), 88 percent of the total acreage (and 91 percent of the agricultural landowners) occur within WRIA 17. The importance of local agriculture to Jefferson County is evident in the presence of vibrant local farmer's markets and small, community stores focusing on local agricultural products; the presence of local organizations to promote farming and assist farmers (such as the LandWorks Collaborative); and the interest and desire from the Planning Commission members to address food sustainability at the local level. Further, an Economic Planning document prepared in 2010 for Jefferson County, the City of Port Townsend, and the Port of Port Townsend states that (1) while 12 of the 18 employment sections declined from 2008 to 2009, job gains occurred in the agricultural sector during this timeframe by 13.8 percent and (2) value-added agriculture and food processing are an emerging economic driver in Jefferson County.
- b. The Quilcene/Snow Water Resource Inventory Area provides habitat for salmonids, some of which are listed species. Because salmonid habitat is a valuable and integral part of the rural character of Jefferson County, efforts to restore portions of this watershed have been conducted in the past. This has included the restoration of Salmon Creek and portions of the estuary at the mouth of the stream, enhancement of stream and riparian habitat along the Little Quilcene River and Donovan Creek at Quilcene Bay, riparian habitat restoration along Chimacum Creek and tributaries, restoration of habitat in the lowlands along Tarboo Creek, and estuary restoration along Hood Canal near Quilcene. It should be noted that Washington State Department of Fish and Wildlife data show an increase in total escapement of summer chum through 2003 in Snow/Salmon Creeks and Chimacum Creek, and any improvements in fish stocks will be a benefit to stakeholders as well as to those involved in recreational and commercial fishing.
- c. Due to the rural character of Jefferson County, a diversity of habitats is present within the watershed. Habitat types that occur in the County include: coniferous forest; deciduous forest: mixed forest (both coniferous and deciduous trees); native shrub lands; shrub lands dominated by non-native species or a mix of native and non-native species; and areas dominated by herbaceous vegetation. Most areas consisting primarily of herbaceous vegetation in terrestrial habitats occur in previously cleared areas or along roadsides, and are composed mostly of non-native plant species. Riparian and wetland resources adjacent to streams provide functions that support salmonids and other aquatic organisms, and provide connectivity (wildlife corridors) to other habitats used by terrestrial species. Areas consisting of native vegetation on agricultural lands provide habitat for wildlife species and support stream functions for fisheries (such as maintaining cool in-stream water temperature, protecting stream banks from erosion, and contributing organic materials to invertebrates used as a food source for salmonids). The relatively intact habitats dominated by native vegetation are most vulnerable to

new agricultural development and would benefit from protection measures provided by the VSP. However, some wetland, stream, and adjacent upland habitats have been degraded and would benefit from restoration efforts, which is also required under the VSP. The habitats in WRIA 17 would be expected to support large and small mammals, raptors, perching birds, waterfowl, amphibians, salmonids and other fish species, and aquatic invertebrates.

- d. Leadership can be provided at various levels, including but not limited to, elected County officials, appointed advisors, local government staff, Jefferson County Conservation District staff, Farm Bureau staff, and individuals associated with stakeholder groups and non-profit organizations. Jefferson County has individuals from agricultural and environmental interests who are very much involved with land use issues, are capable of providing leadership, and could contribute to a work plan. In the past, tribal representatives have actively participated in previous collaborative efforts and may be willing to participate in the preparation and implementation of a work plan.
- e. Data and resource documents are available and can be used for the VSP. Sources of information that could be incorporated into the VSP include, but are not limited to, GIS mapping, scientific reports prepared for the County, water quality data collected by the County, resource information from local tribes, and resource information from state and federal agencies. In those watersheds that cross County boundaries, various representatives from the Watershed Group could contact others in an effort to provide a coordinated response in the work plans.
- f. Technical assistance is available locally to support and aid in the development and implementation of a work plan. Examples of local watershed groups that are capable of coordinating the development and implementation of a work plan include the Conservation District, East Jefferson Watershed Council, and Washington State University Cooperative Extension.
- g. Provided with adequate funding, there is a likelihood of completing and implementing a viable work plan at the local level.

APPROVED AND ADOPTED this 17th day of January, 2012.

SEAL:

JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

John Austin, Chairman

ATTEST:

Phil Johnson, Member

Raina Randall
Deputy Clerk of the Board

David Sullivan, Member

APPROVED AS TO FORM:

David Alvarez
Deputy Prosecuting Attorney

From Philip Morley

VSP & Pros and Cons for Opting In and Opting Out

Opt In

Pro	Con
<ul style="list-style-type: none"> • Supported by most Ag groups 	<ul style="list-style-type: none"> • Concerns raised by Tribes & Env'l groups. Legal review of this is being undertaken.
<ul style="list-style-type: none"> • Greater flexibility: allows a watershed approach for net gain, not restricted to individual properties 	<ul style="list-style-type: none"> • May delay action while we wait for state and federal funding
<ul style="list-style-type: none"> • Can acknowledge restoration work already in place, other programs/plans to further improve in future. 	<ul style="list-style-type: none"> • Not clear who decides if funding is adequate for us to opt out.
<ul style="list-style-type: none"> • May attract state and federal funding to help fund local work with Ag, Env'l, Tribes to find local solutions. <ul style="list-style-type: none"> ○ Even if we eventually must adopt a regulatory backstop under Section 9, this paid work to develop the details of farm plans as a CASP-like alternative to regulation will be very helpful. 	<ul style="list-style-type: none"> • Unlikely that state and federal funding will be fully adequate. Level of work is large and still undefinable at this time. There is likely a partial unfunded mandate for the County and the Cons. Dist to develop the program, administer it and conduct farm plans. Also unknown: extent of delineation of critical areas by govt, or monitoring of practices, water quality, and other measures of net env'l gains, loss.
<ul style="list-style-type: none"> • No funding, no obligation. BUT: <ul style="list-style-type: none"> ○ County control of this is unclear: <ul style="list-style-type: none"> ▪ how long do we wait in stasis if funding hasn't happened? ▪ If funding is partial (very likely), does county have option to opt out before 3, 5 8 or 10 yrs? 	<ul style="list-style-type: none"> • Appears to shift County BoCC role to unelected Watershed Group. ESHB 1886 gives programmatic and evaluation control to a Watershed Group. It is not clear what quality control or accountability the County could exercise over this group, or if they would be fully independent in establishing work programs and benchmarks that must be met.
	<ul style="list-style-type: none"> • Applicability of VSP to <u>New Ag</u> and to <u>structures on Existing Ag</u> is not clear. Appears some form of CAO or prescriptive standards must likely apply.
	<ul style="list-style-type: none"> • Best Management Practices have not been set or vetted by state or Feds. Developing these locally is a capacity problem for a small county, and may become a hot conflict for Ag, Env'l and Tribal interests.
	<ul style="list-style-type: none"> • Approval of county work plan(s) is appealable to GMHB, but may be defended by State Cons. Commn.

Options:

- See if Watershed Group can be structured to report through the County, or make it a creature of the County.
- Explore supplemental funding by Consvn District to administer farm plans.

Opt Out

Pro	Con
<ul style="list-style-type: none"> • Supported by Tribes and env'l groups 	<ul style="list-style-type: none"> • Support by most local Ag orgs in favor of VSP
<ul style="list-style-type: none"> • Retains County control of Critical Area standards (subject to Commerce OK, potential challenge to GMHB) 	<ul style="list-style-type: none"> • Any detail of our CAO regs/programs can be appealed to GMHB.
<ul style="list-style-type: none"> • Certain timeline to address: 2015 adoption to meet 2016 deadline. 	<ul style="list-style-type: none"> • Walks away from state funding and possible technical assistance to develop the farm plan option.
<ul style="list-style-type: none"> • Likely to be a more efficient process – county consults with interest groups to look for common ground, but County can ultimately propose the solutions. Less time and effort on facilitation of volunteer watershed group and watershed group's outreach program. 	<ul style="list-style-type: none"> • If we opt out, the chance of a negative impact on availability of federal \$\$ for landowners appears somewhat remote, although this is by no means certain.
	<ul style="list-style-type: none"> • County's ability to look watershed wide, rather than property by property – and thereby gain more flexibility in how individual properties are regulated - is not clearly available, as it is under VSP.
	<ul style="list-style-type: none"> • Developing a VSP-like option under CAO regs as an alternative will take much work and after that, potential appeal to GMHB.

Options:

- Create a program under CAO similar to VSP, such as Whatcom County, or others.
- Use (and refine) a state-blessed model, rather than create our own from scratch.

Question	Answer
<p>1. If county opts in and accepts the VSP funding, can the county later opt out?</p>	<ul style="list-style-type: none"> • Once a county has opted-in, there are escape dates at 3, 5 & 8 years from the “receipt of funding date” but by that time Jefferson County will have already accepted the VSP money. • The withdrawal would require an Ordinance or Resolution in order to withdraw. • But there are consequences for opting-in and then opting-out per VSP §4(7). For the “participating watershed” (a term of art in the VSP) that was withdrawn, a review and, if necessary, a revision to the development regulations (“D.R.”) that apply in the withdrawing watershed to agriculture must occur within 18 months of the withdrawal.
<p>2. If Jefferson County opts in and then wishes to reject accepting payment, can the county then opt out prior to accepting payment? Would that change our CAO update deadline?</p>	<ul style="list-style-type: none"> • Probably yes, because “opting-in” and accepting the money to undertake a VSP program are two separate steps, each of which must be completed via an Ordinance or Resolution. • A county opts in pursuant to §4(1) but acknowledges receipt of the VSP funds per §5(1) thereby accepting the funds, said acknowledgement creating a “receipt of funding” date [see definitions, §2(9)] that is then used to measure various timelines found within the VSP. • Jefferson County could theoretically “opt-in” only to later NOT take the legislative action necessary per §2(9) to accept the VSP funds offered to the county per §5(1). • However, opting-in and then refusing the funds equates with opting out and the consequences described in §4(7) would apply. See the box above. • It would also leave the state agencies quite peeved.

3. Does the VSP apply to new agriculture, and structures on existing agricultural properties? If so, would the standards/practices applied to new agriculture be the same as those that would apply to existing agriculture? If different, how different?

- The VSP, as a new law, would apply prospectively only.
- Per VSP§4 the VSP is offered as an alternative to using a CAO to protect CA where agricultural activities (“AA”) are occurring.
- The VSP defines AA as does the SMA at RCW 90.58.065(2)(a),
- RCW 90.58.065(2)(a) defines AA as, among other things, “conducting agricultural operations” and “maintaining, repairing, and replacing agricultural facilities” and adds in §.065(1) that new SMP, created under the current guidelines at Ch. 173-26 WAC, may not modify or limit AA.
- The reader will note that the SMA intentionally does not include new “agricultural facilities” (e.g., shelters, ponds, ditches, fences, pumps & pipes, roadside stands) w/in the definition of AA because it speaks only of “maintaining, repairing, and replacing” such facilities.
- This omission means new SMP are allowed to modify or limit new “facilities” for agriculture if that proposed facility would be in the shoreline jurisdiction.
- The SMA definition of AA [VSP §2(1)] if read literally, would mean new agri. facilities cannot be regulated through the VSP but existing ones could be.
- Such a distinction would lead to odd consequences because, for example, at a new start-up farm the act of farming would be subject to a VSP-derived work plan but the new pole structure there would be subject to the SMP or CAO.
- Unlikely the VSP d/n apply to new agricultural facilities b/c of the VSP goals:
1) maintain & improve the long-term viability of WA agriculture and 2) “focus & maximize voluntary incentive programs as an alternative to historic approaches [to CA protection.]” The VSP should apply to new agri. facilities.
- Note new agri. facilities may be outside the VSP and thus treated differently.
- If new agri. facilities are w/in scope of VSP, then the content of the work plans created pursuant to VSP §6 would determine what agricultural activities or facilities (old or new) are subject to the VSP and whether the agricultural use or facility predates the VSP would NOT determine whether the VSP applied.
- Per VSP §15 a farmer with a farm plan could continue operating under the farm plan regardless of what the VSP work plan for his or her basin mandates. A farmer w/ a VSP work plan can withdraw at their contract’s end. VSP §14(1).

4. Jefferson County's CAO, adopted in 2008, exempts existing agriculture. Under ESHB 1886, If Jefferson County opts out, does that mean that Jefferson County can still wait until 2016 to update its CAO, or must it update and review its CAO within 18 months of opting out?

- This question and answer assumes Jefferson County never opted in.
- One must review VSP §4(6) which relates to a County opting out of VSP.
- The general rule is that if a county opts out, then there must be a review and, if necessary, a revision of the D.R. that exist to protect CA as they specifically apply to agricultural activities within 2 years of the effective date of this statute, or two years from July 22, 2011. So that deadline would be July 22, 2013 which is in fact only some 18 months in the future.
- HOWEVER, an exception also exists:
- Any county that did an update of its CAO between 7/1/2003 and 6/30/2007 with respect to that portion of the CAO (D.R.) which specifically applies to agricultural activities gets a "pass" from this 2013 deadline.
- Does Jefferson County qualify for the exception? Presumably yes.
- The County reviewed its CAO as part of its mandatory CP/DR update in 2004 and adopted in its entirety the then-existing CAO originally made part of the UDC in 2000.
- So the County seems to fit into the 2003-2007 time frame and thus not subject to the 2013 deadline BUT there is an additional wrinkle because the County's CAO was revised and recodified at Ch. 18.22 JCC in March 2008 and therefore the County might have not considered the CA/agriculture interplay in 2008.
- So the question becomes does the current CAO (2008) treat agricultural activities in the same manner as the CAO that went through the mandatory 7-year update process in 2004?
- If the answer is "yes," then the County presumably has a CAO that fits the exception laid out in VSP §4(6)(b). This County can answer "yes." b/c
- JCC §18.20.030, the D.R. that lists the performance standards and other D.R. that agricultural activities must comply with and also distinguishes between new and existing agricultural activities, became part of JCC Title 18 on May, 10 2004 (see Ord. #06-0510-04) and has remained unchanged to the present date meaning it was part and parcel of the mandatory 7-year update of 2004.

<p>5. Who determines if the funding provided to the county for VSP work is adequate or inadequate?</p>	<ul style="list-style-type: none"> • Per VSP §10 the State Conservation Commission (“SCC”) determines if there has been adequate funding for a particular watershed and must do that for “participating watersheds” by 7/1/2015 and every two years thereafter. • If the funding for a given watershed is deemed by the SCC to be inadequate, then the watershed in essence leaves VSP and has to comply with VSP §9(1), i.e., review and revise its D.R. for CA and agriculture. See VSP §10(3).
<p>6. How would Jefferson County be given oversight or control, if any, consistent with ESHB 1886 over the work products of the watershed group that would be formed if the county opts into VSP?</p>	<ul style="list-style-type: none"> • It is the local watershed group that creates the work plan and submits it to the Director of the SCC for possible approval per VSP §6(2)(a). • No express text (only VSP policy) bars county control of the watershed group. • Requiring BoCC approval of the work plan generated is not found in the VSP. • The VSP intends the watershed group to be “other” than the county and thus any County attempt to control that group would be contrary to the VSP whose goals are to have “voluntary incentive programs as an alternative to historic approaches to [CA protection.]” The historic approach is prescriptive D.R. • The VSP §5(3) lists the mandatory constituent members of a local watershed group and does NOT list the County or its elected officials, instead listing “representatives of the agricultural and environmental groups and tribes that agree to participate.” The County would be a “stakeholder” entitled to a seat. • The County is authorized to “designate itself, (or other entities) to coordinate the local watershed group” per VSP §5(4). The verb coordinate is not a synonym for the verb control and it suggests “facilitation” more than control. • VSP §5(3) states “the county should encourage existing lead entities, watershed planning units, or other ... organizations to serve as the watershed group.”
<p>7. What useful tools that might be part of VSP (for example, taking a macro view and not a site-by-site view of whether the ecological functions have been improved) are also available to the County through the GMA/CAO process if the county chooses to opt out of the VSP?</p>	<p>VSP-like tools are not generally available through the GMA. D.R. (like the CAO) are designed for the permit applicant, i.e., what rules will apply to a specific applicant who owns a specific parcel. They do not typically look at “macro” questions. Innovative techniques (e.g., a CASP) are included in the D.R. when possible. In the “macro” realm, the C.U.P. criteria [JCC §18.40.530 (1)] require the Hearing Examiner to consider the community interest and whether the application will, among other criteria, cause the public interest “no substantial detrimental effect.” For the new SMP a “Cumulative Impacts” study was required and it provides a “useful tool” to consider the aggregate impact of shoreline development.</p>

