

Ballard, Greg

From: Joe Holtrop <joe.holtrop@clallamcd.org>
Sent: Thursday, May 26, 2016 10:37 AM
To: Gray, Steve
Cc: Ballard, Greg; Winborn, Mary Ellen; LoPiccolo, Kevin; Ben Smith; Jennifer Bond; Meghan Adamire; Matt Heins
Subject: Re: farm plan self assessments
Attachments: 2 Clallam Ag Standards 5-10-16-CCD edits.docx

Here are our suggested edits along with a few additional comments. Many of the comments are included because some things still concern us but we couldn't offer up good solutions. Others just provide some further explanation. It is helpful to turn off the tracked changes on some sections, as the edits get kind of messy.

I'll be around all day today but out until Tuesday; however, I will be able to access email over the long weekend if there's something I need to respond to sooner than Tuesday.

Thank you for the opportunity to contribute to this effort. Like you, we want to make this work for both farm operators and the environment. Good luck with this evening's workshop in Forks.

Joe E. Holtrop

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On Wed, May 25, 2016 at 3:28 PM, Gray, Steve <SGray@co.clallam.wa.us> wrote:

Hello Joe,

Thank you for the follow-up information. Also, thanks again for being part of the program last night.

We look forward to receiving the Conservation District additional comments and continuing to work with you on this issue.

Thanks, Steve

From: Joe Holtrop [mailto:joe.holtrop@clallamcd.org]
Sent: Wednesday, May 25, 2016 2:58 PM
To: Gray, Steve
Subject: farm plan self assessments

Steve,

Good meeting last night. Attached are the environmental self assessment worksheets we have cooperators complete when doing a conservation plan. I developed these several years ago, so they might be due for updating. I didn't include the forestland worksheet, which deals mainly with wildfire prevention.

Also, I think something needs to be decided more definitively regarding the question of being in compliance when someone implemented a plan in the past but the standards have changed. They did what was expected of them at the time, so it seems they shouldn't be asked to do more unless it can be demonstrated that what they're doing isn't working. On the other hand, up until about 15 years ago, most of the focus was on water quality, not habitat.

Staff have reviewed the draft language again and made suggested changes and additional comments. I do want to pass it by Ben before sending it to you, but if I don't hear back from him by the end of the day tomorrow, I'll send what we have.

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PROPOSED NEW SECTION TO CRITICAL AREAS CODE

27.12.037 CCC ~~Existing Existing and and~~ Ongoing Required Agriculture Agricultural Required Best Management Practices on Agricultural Lands.

(1) Purpose and Intent. The purpose of this Section is to address two mandates under the Growth Management Act (GMA): (a) to protect the existing functions and values in and adjacent to aquatic habitat conservation areas (AHCA) and wetlands, and (b) to conserve and protect agricultural lands, specifically those lands with existing and ongoing agricultural activities that are located within 200 feet of AHCA's and wetlands regulated under this Chapter.

(2) Applicability. As defined in CCC 27.12.900, existing and ongoing agricultural activities occurring on or within 200 feet of AHCA's and wetlands ~~may deviate from that do not currently comply with~~ the protection standards (including standard buffers) of this Chapter ~~are by complying with subject to the provisions alternate standards presented in~~ of this Section. The alternate standards from the AHCA and wetland standards of this Chapter ~~may only apply~~ ~~be applied~~ to existing and ongoing agricultural activities related to ~~the cultivation of crops, and grazing of livestock and the land preparation associated with those agricultural activities.~~ Agricultural activities that do not meet the definition of existing and ongoing agriculture are required to comply with the other provisions of this Chapter, including but not limited to the applicable AHCA and wetland buffers and protection standards, ~~the minimum buffer widths of which are 50 feet and 2535 feet, respectively.~~

Comment [J1]: I think this section needs to clearly inform a farmer as to they need to do to be in compliance with this code. If I understand correctly, they need to either 1) Operate their farm in such a way that there is no harm or degradation through the use of the listed BMPs. Or 2) Develop a custom farm conservation plan that will enable them to vary from the listed protection standards. Greg is concerned about the "little old lady" having some sort of minimum set-back to evaluate whether her neighbor is in violation but my bigger concern is ensuring that the farmer, directly impacted by this code, understands what his/her requirements are. Are they required to have a farm plan? If not, how does the farmer/County know if their current mgmt. is leading to no harm or degradation.

(3) No Harm or Degradation Standard.

(a) All existing and ongoing agriculture activities must be conducted so as not to cause harm or degradation to the existing functions and values of AHCA's and wetlands (the "no harm or degradation standard"). For the purposes of this Section, the phrase "no harm or degradation" means the following:

- (i) Meeting or improving documented water quality levels, if available, consistent with the State water pollution control laws.
- (ii) ~~Meeting, or working towards meeting, the requirements of any total maximum daily load (TMDL) water quality improvement projects or requirements established by the Washington Department of Ecology (ECY) pursuant to Chapter 90.48 RCW.~~
- (iii) Meeting all applicable requirements of Chapter 77.55 RCW (Hydraulics Code) and Chapter 220-110 WAC (Hydraulics Code Rules).
- (iv) Meeting the specific protection measures for AHCA's or wetlands for existing and ongoing agriculture specified in Subsections (4) and (5) of this Section.
- (v) No evidence of significant degradation to AHCA's or wetlands regulated under this Chapter that can be directly attributed to adjacent existing and ongoing agricultural activities.

Comment [J2]: This is similar to below, but we might get to this through PIC.

(b) The references above to Chapters 77.55 and 90.48 RCW and Chapters 173-201A and 220-110 WAC shall not be interpreted to replace the ECY and Washington Department of Fish and Wildlife (WDFW) authority to implement and enforce these State programs with County responsibility to do so, but rather are intended to provide County input and

Comment [J3]: These are never set for individual properties or farms, so I don't know how you would ever know if any given farm were to be complying with this.

supplemental County involvement as needed to implement the County's GMA obligations under this Section.

- (c) An owner or operator is responsible only for those conditions caused by agricultural activities conducted by the owner or operator and is not responsible for conditions that do not meet the requirements of this Subsection resulting from the actions of others or from natural conditions not related to the agricultural activities. In those situations where the County is presented with data showing a violation of a State water quality standard at a particular location, but where the County cannot identify any condition or practice existing or occurring at a particular agricultural operation that is causing the violation, the County shall refer the information regarding the State water quality violation to ECY and shall follow other procedures described in Subsection (8) of this Section. Conditions resulting from unusual weather events (such as a storm in excess of 25-year, 24-hour storm), or other exceptional circumstances that are not the product of obvious neglect are not the responsibility of the owner or operator, but shall be subject to the requirements for emergency actions described in CCC 27.12.035(2).

(4) Agricultural Best Management Practices (BMPs). Agricultural activities are expected to be conducted in a manner that protects against harm or degradation to the existing functions and values of fish and wildlife habitat in and adjacent to AHCA's and wetlands through the implementation of agricultural BMPs ~~to address the performance and protection standards in Subsection 5 below.~~ Agricultural landowners and operators are encouraged to design and implement BMPs through consultation with the following resources:

- (a) Section 4 of the USDA Natural Resources Conservation Service (NRCS) "Field Office Technical Guide" (FOTG) contains a nonexclusive list of conservation practices (BMPs) to guide implementation of the expectations of this section.
- (b) The Clallam Conservation District may be available to provide technical assistance and assist in the development of farm conservation plans ~~or provide technical assistance.~~

(5) Performance and Protection Standards

(a) Livestock and Dairy Management. Livestock and dairy operations must be conducted so as not to ~~harm or degrade AHCA's, including contribute any wastes of sediments into a natural or modified natural stream in~~ violation of state water quality standards.

- i. ~~Livestock watering and access must be limited in AHCA's.~~ Unrestricted access of livestock to streams regulated under this Chapter is prohibited. Compliance is demonstrated by fencing livestock access from streams, ~~and limiting to one crossing to the extent possible. Where livestock exceeds one animal unit per one acre of grazable pasture adjacent to AHCA's, all livestock watering facilities and crossings in streams must be constructed consistent with applicable NRCS conservation practices. Where no other reasonable alternative exists for a livestock stream crossing other than a ford, its design and construction must meet NRCS standards and specifications.~~
- ii. Livestock pasture and areas of livestock confinement and concentration ~~such as corrals, paddocks, exercise areas, heavy use areas, and watering facilities~~ within 200-feet of AHCA's must be managed so as to maintain vegetative coverage or to provide a minimum 35-foot wide vegetated buffer strips sufficient ~~to avoid contributing sediments and other pollutants to an AHCA in violation of State water pollution control laws.~~

~~This includes the following NRCS Conservation Practices as adopted or as later amended:~~

Comment [J4]: My thought is to essentially just say that one needs to farm in a way that doesn't do harm to critical areas, and not go into all the possible ways that this could be achieved. The challenge with this is that it kind of leaves it up to the farmer to determine if they're doing harm or not. Although, most of the basic risk factors of livestock keeping are addressed, and if the County does indeed follow through with monitoring, we'll at least know if water quality is being protected. Habitat not so much.

- ~~The installation of diversion terrace to avoid upgradient stormwater runoff from entering concentrated livestock confinement areas consistent with NRCS Conservation Practice 362 (adopted February 2013);~~
- ~~Retention and/or planting of riparian vegetation strips consistent with NRCS Conservation Practice 391 (adopted October 2014);~~
- ~~Installation of filter strips consistent with NRCS Conservation Practice 393 (adopted December 2014);~~
- ~~Prescribed grazing consistent with NRCS Conservation Practice 528 (adopted February 2013);~~
- ~~Water facilities consistent with NRCS Conservation Practice 614 (adopted February 2015);~~
- ~~Other applicable NRCS Conservation Practices~~

iii. Manure Collection, Storage and Use. Any structure for livestock confinement ~~or concentration of livestock areas~~ (exceeding one animal unit per acre) that is located upgradient from and within 200-feet of an AHCA should have manure and soiled bedding ~~from stalls from these areas~~ removed within 3 days weekly and placed in a storage facility protected from rainfall ~~so such~~ that runoff does not carry pollutants ~~and bacteria~~ to AHCA's.

~~(b) Nutrient and Farm Chemical Management.~~

~~i. The owner or operator must not place manure. Manure must be stored in a stream or in a location where such wastes are likely to will not be carried into a stream by any means. Spreading of any manure within 50 feet of AHCA's is prohibited. The, and spreading of liquid manure on bare, frozen or snow-covered ground, or saturated soil is prohibited (generally from October 31st to March 1st), unless otherwise permitted pursuant to:~~

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~~A. An approved dairy nutrient management plan, if applicable, as prescribed by Chapter 90.64 RCW; or~~

~~B. A farm conservation plan prepared or approved by the Clallam Conservation District, and approved by Clallam County for consistency with this Section.~~

~~(b)(a) Nutrient and Farm Chemical Management.~~

~~ii.i. Agricultural operators shall apply crop nutrients (both organic and inorganic) shall be applied at agronomic rates and times recommended for that particulareach crop and only during the growing season.~~

~~ii.ii. Farm chemicals (i.e. pesticides, insecticides, herbicides, etc.) shall only be applied consistent with all requirements stated on the chemical container labels and all applicable Federal and State laws and regulations, such as Chapter 15.58 RCW (Pesticide Control Act), Chapter 17.21 RCW (Pesticide Application Act), and 7 USC 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act).~~

~~(c)(b) Soil Erosion and Sediment Control Management.~~

~~i. Roads used for existing and ongoing agricultural activities must be designed, and maintained and operated such that road surfaces, fill, and associated structures are constructed and maintained in order to avoid contributing sediment to AHCA's and wetlands.~~

~~ii. Agricultural equipment operation must not cause stream bank sloughing or other failure due to operation too close to the top of the bank.~~

(d)(c) Operation and Maintenance of Agricultural Drainage Infrastructure. The following BMPs apply to any watercourse that is part of drainage infrastructure associated with existing and ongoing agriculture:

- i. Dredging or removal of accumulated sediments in any watercourse that is part of agricultural drainage infrastructure should be conducted when there is no or minimal water flow (generally between June 15th and October 31st) in the watercourse being maintained in order to minimize potential for distributing sediments to salmonid-bearing waters.
- ii. Excavation spoils must be placed so as not to cause bank failures and so drainage from such spoils does not contribute sediment to streams.
- iii. Mowing or cutting of vegetation located within a watercourse may be conducted at any time; provided, that any cutting or mowing is above the ground surface within the channel and in a manner that does not disturb the soil or sediments; and provided, that the cut vegetation does not block water flow. Watercourse bank vegetation shall be preserved or allowed to reestablish as soon as practicable after drainage construction and infrastructure maintenance are is completed in order to stabilize earthen ditch banks.

(e)(d) Riparian Management. Existing riparian and wetland vegetation, especially native vegetation, should be retained to continue to provide soil and streambank stability, shade, filtration, and habitat for fish and wildlife. Landowners are encouraged to plant and restore/reestablish native vegetation adjacent to AHCA's and wetlands to improve fish and wildlife habitat by providing shade, cover, filtration of pollutants, organic debris, and control of noxious weeds. Funding may be available through Clallam Conservation District for riparian forest buffer restoration (i.e. Conservation Reserve Enhancement Program (CREP)).

(f)(e) Grazed Wet Meadows. Livestock grazing is allowed to continue in wetland areas that were converted to non-wetland use Existing and on-going agricultural activities that occur within grazed wet meadows converted prior to June 16, 1992 and that meet the definition of existing and ongoing agriculture. shall comply with the above agricultural BMPs of this Section to the maximum extent practicable Livestock should be not be allowed access to these areas when soil moisture conditions may result in soil compaction and damage to vegetation, and when livestock manure may contribute to water pollution – generally October through May.

(6) Custom Farm Conservation Plan Option. To demonstrate compliance and/or vary from any protection standards above, an owner or operator may elect to prepare and submit a Custom Farm Conservation Plan to Clallam County Department of Community Development (DCD) for review and approval. The farm conservation plan shall include the following; name of owner; parcel numbers, number of acres in agriculture; description of the agricultural operation; length of time the property has been in continual agriculture (no lapse greater than 5 years); number and type of animals being raised; location of fences to limit livestock access from AHCA's; types of crops being raised; general fertilizer (i.e. manure or commercial fertilizers), type and extent of existing vegetation, especially native vegetation; pesticides, insecticides, and herbicides being utilized; a site map showing the agricultural activities, access roads, and buffer and riparian areas in and adjacent to AHCA's and wetlands; existing fence locations; and proposed BMPs to protect the functions and values of AHCA's and wetlands. The site plan should focus on the areas within 200 feet of AHCA's and wetlands regulated under this Chapter. Technical assistance for preparation of farm conservation plans may be available from Clallam Conservation District.

Comment [J5]: I think this either needs to be removed from the code or needs further definition. "Any watercourse" could be interpreted as a stream, which have historically been used on farms in associate with drainage infrastructures. Maybe adding a sentence that these practices are to be used only on man-made drainage systems and not natural streams.

Comment [J6]: Or define "Agricultural Drainage Infrastructure." If the watercourse that is part of drainage infrastructure is a stream, an HPA will be required.

Comment [J7]: I like how this just sets out what the expected outcome is without prescribing how to achieve it.

Comment [J8]: I'd rather they use "drainage ditch" instead of watercourse. Streams are watercourses.

Comment [J9]: Funding may be available through CREP or other programs for this and it may be available for many other things listed above and below. Therefore, I think this should be stated elsewhere, if at all.

Comment [J10]: It makes sense to require a custom plan in order to vary from the protection standards (although our edits tweak them such that they're pretty consistent with NRCS standards), but I'm still concerned that demonstrating compliance is optional. I'm trying to think of scenarios where someone would elect to prepare and submit a plan and can't think of any. Unless someone is followed up on, maybe because of a complaint, and they already have a plan. In which case they would submit that and say, "I'm just doing what my plan says." That's why I deleted the next paragraph and made the following section a subset of the custom plan section.

Comment [J11]: It would be easier to read if these items were in list form.

~~(7) — Recognition for Agricultural Owners and Operators Who Have Implemented Extra AHCA Protection Measures. This Subsection intends to recognize the extra AHCA's and wetland protection measures for existing and ongoing agriculture taken by landowners or farm operators who have implemented an dairy nutrient management plan (DNMP), resource management system plan (RMS plan), or Conservation Reserve Enhancement Program (CREP) from the Clallam Conservation District or NRCS.~~

(a) Those portions of land upon which owners or farm operators have implemented an approved DNMP Dairy Nutrient Management Plan or an Resource Management System plan or Conservation Reserve Enhancement Plan consistent with the conservation practices and management standards that meet the FOTG quality criteria for each natural resource (soil, water, animals, plants, and air) and approved by the Clallam Conservation District or USDA Natural Resources Conservation Service are entitled to a presumption of compliance with the "no harm or degradation" standards described in Subsection (3) of this Section. ~~The plan RMS or DNMP must include address within the planning unit any all AHCA's or and wetlands on the property, as well as all upland areas within the owner's control that could potentially adversely impact the watercourse and/or associated fish habitat AHCA.~~

(b) Such presumption of compliance may be rebutted and enforcement commenced as described in Subsection (8) below if the County obtains credible evidence that the agricultural operation is not meeting the no harm or degradation standards of Subsection (3) of this Section. To be entitled to this presumption, the owner or operator shall provide the County with documented evidence of implementation of those elements of the approved plan that are relevant to the resource impact at issue.

(8) Compliance. ~~Landowners and operators conducting existing and ongoing agriculture activities subject to this Chapter are expected to meet the performance and protection standards of this Section through voluntary compliance.~~ It is the policy of the County to emphasize compliance by education, ~~prevention~~, and voluntary compliance as a first step. The County will utilize the following methods for achieving-determining compliance with the performance and protection standards of this Section:

(a) ~~Clallam County, the Clallam Conservation District, and the Department of Ecology has regulatory authority for critical areas code enforcement and the Department of Ecology has regulatory authority for enforcement of state water quality protection laws. The mechanisms for responding to alleged water quality violations of agricultural origin and the role of the Clallam Conservation District in providing assistance to agricultural owners and operators to correct water quality violations is described in a 1987 Memorandum of Agreement with Ecology and a 1998 Memorandum of Understanding with the Countywork cooperatively to identify potential water quality violations of agricultural origin and to provide assistance to agricultural owners and operators for preventing or correcting water quality violations pursuant to a 1998 Memorandum of Understanding, as amended. The Department of Ecology maintains ultimate compliance authority for enforcing state water quality standards.~~

(b) ~~Where applicable and also funding allows, (The County will apply implement the Pollution Identification & Correction Plan for the Sequim Bay-Dungeness Watershed Clean Water District (December 2014 or as later amended), to strategically and systematically identify and address agricultural sources of pollution-prevention, monitoring, and correction.~~

(c) While voluntary compliance is ~~a~~ desirable, compliance with this Section is subject to CCC 27.12.055, Enforcement, and Title 20 CCC, Code Compliance, as appropriate.

Comment [J12]: This part is critically important because CREP plans only address the lands enrolled in the program, and a landowner decides what to enroll and what not. They might only enroll one side of a stream and not the other.

Comment [J13]: How does a farmer prove that they are in compliance? How does the County know if farmers are/aren't in compliance? Shouldn't this section contain some sort of procedure/process to verify compliance? Something like: "Farmers impacted by this ordinance are required to document (or attest to) compliance with the "No Harm or Degradation Standard" or submit a "Custom Farm Conservation Plan."

Also, it's likely that there will be farmers that are unsure if this code applies to them. Specifically, do they have AHCAs on their properties? How do they get this information? At a minimum there should be at least a sentence informing farmers how they can determine if there are critical areas on their lands. Maybe reference online maps or assistance that can be provided by DCD/others?

Comment [J14]: Almost everything in here is subject to available funding, so if we say it here, we need to say it everywhere else that it applies, which would be everywhere the conservation district is mentioned.

(9) Baseline Conditions and Monitoring and Adaptive Management. The implementation of the intent of this Section shall be subject to establish baseline conditions, to establish monitoring indicators, and to utilize adaptive management.

(a) Existing Baseline Functions and Values. The County will use the following to establish the baseline of existing functions and values for AHCA's and wetlands:

- i. Streamkeepers Biological Integrity Scale (B-IBI) stream rating system dated December 2011.
- ii. Washington State Department of Ecology Water Quality Assessment 305 Report dated December 2012.
- iii. Washington State Department of Ecology 303(d) dated December 21, 2012.
- iv. Clallam County Shoreline Inventory and Characterization Report for Portions of Clallam County Draining to the Strait of Juan de Fuca, March 2012.
- v. Revised Draft WRIA 20 Inventory and Characterization Report, May 2012.

(b) Monitoring Indicators. The County will use the following indicators to monitor trends in the baseline:

- i. Stream reach classification changes based on the Streamkeepers Biological Integrity Scale (B-IBI) stream rating system of Healthy; Compromised; Impaired' Highly Impaired' and Critically Impaired.
- ii. Change in stream reach or AHCA water quality documented by Streamkeepers of Clallam County.
- iii. Removal or addition of a stream reach or AHCA from the Washington State Department of Ecology's 303 (d) list.
- iv. Change in stream reach or AHCA water quality documented in the WA State Department of Ecology's Washington State Water Quality Assessment 305 Report
- v. ~~Actions identified in~~Water quality monitoring performed under the Pollution Identification and Correction (PIC) Plan for the Sequim Bay- Dungeness Watershed Clean Water District.
- vi. A downgrade to the Wetland Classification of wetlands adjacent to or hydrologically connected to existing and ongoing agricultural activities.
- vii. *Other Data Sources - Reserved*

(c) Adaptive Management. The Administrator will review the above monitoring indicators to determine trends in the baseline functions and values in sub-part (a) above. If there is a downward trend, the Administrator will assess whether existing and ongoing agriculture activities subject to this Section are likely contributing to this downward trend and, if so, implement the following steps:

- i. Contact landowners of existing and ongoing agriculture and provide information to make them aware of the issue of concern (e.g., monitoring results).
- ii. If the baseline functions and values are do not improved in subsequent monitoring results, the Administrator, will seek to determine whether there is an identifiable cause to the problem through site visits, consultations with other agencies, or other means of investigating the cause.

- iii. If there is an identifiable issue related to existing and ongoing agriculture, the Administrator will seek compliance under sub-part 8 of this Section.
- iv. If the agricultural operations regulated under CCC 27.12.037 are utilizing the Best Management Practices to meet the performance standards outlined in ~~the~~ this Section but ~~that~~ the functions and values of the AHCA and wetlands still degrade, this may necessitate a revision to the required ~~Best Management Practices~~ performance standards or the enactment of other protective measures in this Section to address the problem.

Comment [J15]: Sub-part 8 just says education and voluntary compliance will be pursued or Ecology will take over or PIC will be the method used. (c). above says about the same thing.