

VOLUNTARY STEWARDSHIP PROGRAM

STATEWIDE ADVISORY COMMITTEE AND CONSERVATION COMMISSION

POLICY ADVISORY #01-17

THE CONFIDENTIALITY OF INDIVIDUAL STEWARDSHIP PLANS UNDER VOLUNTARY STEWARDSHIP PROGRAM WORK PLANS AND LANDOWNER ASSESSMENT TOOLS

AUGUST 2017

SUMMARY

The Conservation Commission (Commission) is empowered to establish policies and procedures for implementing the Voluntary Stewardship Program (VSP).¹ The Commission, after consultation with the VSP Statewide Advisory Committee, provides this advisory to the VSP county work groups on the confidentiality of VSP individual stewardship plans and landowner checklists.

BACKGROUND

The VSP was codified in RCW Chapter 36.70A. The Commission administers the VSP.² Under VSP, the Commission is charged with establishing the Statewide Advisory Committee.³ “The role of the statewide advisory committee is to advise the commission and other agencies involved in development and operation of the program.”⁴ The SAC is comprised of representatives of county, agricultural, and environmental organizations and invited tribal governments.⁵

The Commission has a number of other duties in the VSP that relate to the Statewide Advisory Committee, including

- To provide administrative support for the program's statewide advisory committee in its work.”⁶
- To maintain a web site about the program that includes times, locations, and agenda information for meetings of the statewide advisory committee;⁷

¹ [RCW 36.70A.705\(2\)\(a\)](#)

² [RCW 36.70A.705\(1\)](#)

³ [RCW 36.70A.745](#)

⁴ [RCW 36.70A.745\(2\)](#)

⁵ [RCW 36.70A.745\(1\)\(a\)](#)

⁶ [RCW 36.70A.705\(2\)\(h\)](#)

⁷ [RCW 36.70A.705\(2\)\(i\)](#)

- In conjunction with the statewide advisory committee, conduct a review of the program beginning in 2017 and every five years thereafter, and report its findings to the legislature by December 1st;⁸
- Consult with the Statewide Advisory Committee upon receipt of a report by a watershed group under RCW [36.70A.720\(2\)\(b\)](#);⁹ and
- Consult with the statewide advisory committee and other state agencies, not later than August 31, 2015, and each August 31st every two years thereafter, and report to the legislature and each county that has elected under RCW [36.70A.710](#) to participate in the program on the participating watersheds that have received adequate funding to establish and implement the program.¹⁰

CONFIDENTIALITY OF INDIVIDUAL STEWARDSHIP PLANS IN VSP WORK PLANS

The issue of the confidentiality of individual stewardship plans under VSP continues to be a topic of discussion among work groups. The Commission directed staff to investigate this issue and to seek guidance from the Statewide Advisory Committee.

The Commission, after consultation with the Statewide Advisory Committee, would like to address confidentiality of individual stewardship plans in VSP work plans.

Individual stewardship plans are not VSP work plans, but a separate tool authorized in the VSP statute (RCW Chapter 36.70A) that work groups could use to achieve the goals of the VSP work plan.

Under current Washington state law, all public documents are subject to disclosure under RCW Chapter 42.56 unless exempted in statute.¹¹ There is an exemption for farm plans developed by conservation districts.¹² RCW 89.08.560 also deals with farm plan disclosures and includes a definition of “farm plan.”¹³ However, RCW 89.08.560 only applies to farm plans developed by conservation districts - other entities who may be technical service providers under VSP wouldn’t have this statute apply to them.

The issue presented in VSP is the term used in VSP is “voluntary stewardship plan” or “individual stewardship plan” which is different from “farm plan.”¹⁴ We will use the term “individual stewardship plan” for simplicity.

Remember, VSP does not focus on the individual parcel scale, but rather on the watershed scale, therefore there is no need for analysis at the individual parcel level under VSP.¹⁵

⁸ [RCW 36.70A.705\(2\)\(k\)](#)

⁹ [RCW 36.70A.730](#)

¹⁰ [RCW 36.70A.740\(4\)](#)

¹¹ [RCW 42.56.070\(1\)](#)

¹² [RCW 42.56.270 \(17\)\(a\) \(b\)](#)

¹³ [RCW 89.08.560\(2\)](#)

¹⁴ See generally [RCW 36.70A.720\(1\)\(g\) and \(i\)](#); [RCW 36.70A.750](#); [RCW 36.70A.755](#).

¹⁵ [RCW 36.70A.710 \(1\) \(b\) \(ii\)](#), [RCW 36.70A.710 \(3\)](#), [RCW 36.70A.720 \(1\)](#), [RCW 36.70A.725 \(2\)](#)

The question then is, are individual stewardship plans subject to disclosure? The Commission believes the individual stewardship plan meets the definition of farm plan in the statutes. The Commission's position is that it believes that similar to farm plans developed by conservation districts, individual stewardship plans are confidential and exempt from disclosure, unless permission is granted by the landowner or operator.¹⁶ Further, additional confidentiality requirements are invoked if the landowner's farm plan is a requirement under federal law.¹⁷

The Statewide Advisory Committee concurs with the position of the Commission that similar to farm plans developed by conservation districts, individual stewardship plans are confidential and exempt from disclosure, unless permission is granted by the landowner or operator, provided they are provided by or created in conjunction with a conservation district.

LANDOWNER SELF-ASSESSMENT TOOLS IN VSP WORK PLANS

Similarly, the issue of the confidentiality of landowner self-assessment tools in VSP work plans continues to be a topic of discussion among work groups.

The landowner self-assessment tool is a tool that some VSP work groups use in their work plans which allows landowners to self-assess their property. The self-assessment tool could be used with conservation districts or separately by the landowner. Other governmental agencies have created and provided them to landowners, and their use is encouraged as outreach to landowners.

The Commission's position, after consultation with the Statewide Advisory Committee, is that the self-assessment tool could be made available to individual landowners and wholly retained, kept and reviewed by the landowner, thus negating any possession of the self-assessment tool by a governmental agency. If an individual landowner wishes to keep the information confidential, the landowner may share information, but should retain and not provide copies of the self-assessment with a governmental agency or personnel.

Future litigation may change how the law looks at this information, but if the government does not collect information, then there is no information to provide.

¹⁶ [RCW 42.56.270\(17\)\(a\)](#); [RCW 36.70A.720\(1\)\(g\) and \(i\)](#); [RCW 36.70A.750](#); [RCW 36.70A.755](#).

¹⁷ See Section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), which prohibits disclosure of certain information by the Department of Agriculture (USDA) and its cooperators, now codified in [7 U.S. Code § 8791 - Information gathering](#).