

Transmittal to FFF Implementation Oversight Committee				
Date:	10/24/2019	From:	Regulatory Task Force (RTF)	Is this a complete action? yes _ no <u>x</u>
FFF Recommendation:	Farm 5 Farm 2 Appendix V	Action:	1 2 Regulatory Task Force Scope	
Title:	Recommendations to the IOC related to <i>On-Site Mitigation</i>			
Description:	<p>The RTF Scope of Work identifies ~ 20 Priority Topics. The RTF prioritized these topics. A complete treatment of the topics is in the “On-Site Mitigation” Issue paper posted on the FFF website https://www.kingcounty.gov/services/environment/watersheds/snoqualmie-skykomish/fish-farms-flooding.aspx .</p> <p>The following topics were examined by the RTF as elements of “On-Site Mitigation”:</p> <ul style="list-style-type: none"> • Mitigation required when farmers maintain drainage ditches or build a farm pad or other structure in a wetland or a buffer of a wetland or stream <i>FFF Appendix V 2. Addressing Regulatory Barriers to Agriculture pg. 11</i> • Mitigation for impacts to Critical Areas: strategies that minimize impact on farmable land <i>FFF Appendix V 2. Addressing Regulatory Barriers to Agriculture pg. 11</i> • Research mitigation requirements for projects that need periodic maintenance. In the case of mitigation for re-dredging, find out whether Farmers owe new net acres. <i>Farm 2 Activity 2</i> • Understanding when voluntary buffer plantings on a waterway can be used as mitigation for drainage maintenance. What are the requirements for setting up an advance mitigation program? <i>FFF Appendix V 2. Addressing Regulatory Barriers to Agriculture pg. 13</i> • Flexibility in siting mitigation plantings i.e. not adjacent to the project site <i>Farm 5 Activity 2 FFF Appendix V 2. Addressing Regulatory Barriers to Agriculture pg. 13</i> 			
Recommendation(s):	These findings will be reviewed by the Department of Local Services Permitting Division (DLS-PD) Regulatory Review Committee (RRC). The RRC is the King County mechanism for making binding determinations on application of King County Code. Once the findings are affirmed by the RRC these will be available online on the Permitting Division website (ref.) and included in the “Farm Practices Illustrated” reference bulletin being developed by the Agriculture team in WLRD.			
Alternatives:	Not Applicable. The On-Site Priority Topic provides answers to existing conditions			
Action Requested	The RTF requests that the IOC review these recommendations and write a thank you letter to King County DLS-PD acknowledging their assistance is addressing priority topics of the FFF			

Priority Topic “On-Site Mitigation”

Introduction

The assignment of the Regulatory Task Force (RTF) is to evaluate regulations and recommend process improvements and statutory changes related to issues identified by FFF participants (farmers, affected Tribes, NGO’s and local government representatives). The Task Force Scope of Work (Appendix V, Addressing Regulatory Barriers to Agriculture, Fish, Farm and Flood Final Agreement) identified Priority Topics that were prioritized by the Agriculture Caucus in spring 2018. The Task Force consolidated a number of items identified in FFF Activities, Actions and Scope of Work under the “On-Site” mitigation.

Findings

1. *Mitigation required when farmers maintain drainage ditches or build a farm pad or other structure in a wetland or a buffer of a wetland or stream*

Agricultural uses including maintaining drainage ditches, building farm pads and constructing agricultural buildings are Allowed Alterations within Wetlands and Aquatic Areas buffers as long as work is consistent with certain conditions as described in King County Code 21A.24 and that the alteration complies with the ...mitigation requirements of 21A.24.130ⁱ (these are usually plantings on an area based on mitigation ratios). An Agricultural project must be associated with an approved farm management plan

2. *Mitigation for impacts to Critical Areas: strategies that minimize impact on farmable land*

King County Code recognizes the impacts that Critical Area buffers can have on farmable lands. The Agriculture Development Standards prioritize the productive agricultural land base and economic viability of agriculture on the site over maintain, restore or enhance critical areas to the maximum extent practical in accordance with the site specific goals of the landowner. Agricultural activities have reduced wetlands buffer width requirements; half those of high impact land uses and a third less than moderate impact land uses. Buffer averaging may be used to accommodate existing structures. With a livestock management plan, buffers are reduced to 50 ft. between grazing areas and aquatic areas / wetland edges. The grazing area buffer may be reduced to 25 ft. feet where a buffer of diverse, mature vegetation already exists. Mitigation for impacts to critical areas and buffers are generally at a 1:1 ratio to satisfy King County requirements.

3. *Mitigation requirements for projects that need periodic maintenance*

The requirement for mitigation of repeated dredging was not explicitly addressed in the ADAP agreement. Ongoing maintenance of the buffer becomes the landowner’s responsibility after three years after planting. The WDFW lead biologist for the Snoqualmie area stated that if a buffer was cut down when the channel was re-dredged, the landowner would be responsible for replacing damaged areas of the buffer, provided it was well established. In cases where the existing buffer had not been effectively established then augmentation planting to the original specifications would be appropriate. We interviewed resource leads from (Department of Local Services-Permitting Division, WA Department of Ecology Water Quality Program, Washington Department of Fish and Wildlife Habitat Program), and they all indicated that mitigation

for impacts to buffers for re-dredging would not require additional acres. If dredging the same area is necessary on a frequent basis (i.e. every 5-10 years), WDFW expressed the need to address the cause i.e. upslope sources of sediment and consider whether the area downstream of the channel is sediment-starved (linkage to additional recommendation number 2 below)

4. *Requirements for setting up an advance mitigation program*

The DLS-PD gives mitigation credit for previous on-site plantings on a project specific basis. In most cases, the source of funding for the plantings generally determines whether it is allowed to be used as “mitigation credit.” If public monies were used then plantings usually cannot be credited towards meeting project mitigation requirements.

What are the requirements for setting up an advance mitigation program?

Landowners should be incentivized, rather than discouraged for this type of work. However, the time-consuming process to establish a consistent, defensible mitigation ratio and effectively track credits in such an exchange seems to offer little lift over the status quo; where the DLS-PD will allow for landowner funded, existing plantings to meet mitigation requirements on a project specific basis.

5. *Flexibility in siting mitigation plantings*

Under the existing ADAP the HPA is the permit/ approving action and the WDFW Habitat Biologist issuing the permit is the conditioning authority. In combination with the established ADAP BMPs, the Habitat Biologist takes a site specific, common sense approach. There is flexibility to locate exact planting sites with the objective of providing optimum lift or protections in the context of site conditions.

In addition to answering mitigation requirements identified in the FFF report, through discussion on the Priority Topic, the RTF identified two additional challenges/opportunities with the current on-site mitigation structure:

1. Providing “in-kind” mitigation, through fish passage barrier removal, as part of ADAP; and
2. Completing a comprehensive site assessment when drainage systems require maintenance more frequently than every 10 yrs.

These two items will be addressed more fully in the forthcoming description of the Comprehensive Drainage Assistance

Implementation Requirements

The RTF coordinator will work with the DLS-PD legislative specialist to obtain review of the findings by the Regulatory Review Committee. When accomplished the findings will be posted on the PD website and included in informational bulletins

21A.24.130 Mitigation and monitoring.

A. If mitigation is required under this chapter to compensate for adverse impacts, unless otherwise provided, an applicant shall:

1. Mitigate adverse impacts to:
 - a. critical areas and their buffers; and
 - b. the development proposal as a result of the proposed alterations on or near the critical areas; and

2. Monitor the performance of any required mitigation.

B. The department shall not approve a development proposal until mitigation and monitoring plans are in place to mitigate for alterations to critical areas and buffers.

C. Whenever mitigation is required, an applicant shall submit a critical area report that includes:

1. An analysis of potential impacts;
2. A mitigation plan that meets the specific mitigation requirements in this chapter for each critical area impacted; and
3. A monitoring plan that includes:
 - a. a demonstration of compliance with this title;
 - b. a contingency plan in the event of a failure of mitigation or of unforeseen impacts if:
 - (1) the department determines that failure of the mitigation would result in a significant impact on the critical area or buffer; or
 - (2) the mitigation involves the creation of a wetland; and
 - c. a monitoring schedule that may extend throughout the impact of the activity or, for hazard areas, for as long as the hazard exists.

D. Mitigation shall not be implemented until after the department approves the mitigation and monitoring plan. The applicant shall notify the department when mitigation is installed and monitoring is commenced and shall provide King County with reasonable access to the mitigation for the purpose of inspections during any monitoring period.

E. If monitoring reveals a significant deviation from predicted impact or a failure of mitigation requirements, the applicant shall implement an approved contingency plan. The contingency plan constitutes new mitigation and is subject to all mitigation including a monitoring plan and financial guarantee requirements. (Ord. 15051 § 150, 2004; Ord. 10870 § 460, 1993)