

THE SSB 5248 PROCESS

SSB 5248 Stakeholder Committee Meeting

Wednesday, 17 October 2007 10:10 a.m. – 2:57 p.m.
Green River Community College, Auburn

DRAFT SUMMARY

of the Meeting's Key Discussions, Decisions and Agreements

Attended: **Agriculture:** Scott Dahlman, Jack Field, Jay Gordon, Jim Hazen, Mike Shelby, John Stuhlmiller and Dan Wood. **Local Government:** Eric Johnson, Rick Miller, Harry Reinert and Ron Walter. **Environmental:** Len Barson, Nina Carter, Kaleen Cottingham, Mo McBroom, Bill Robinson and Joe Ryan. **Tribal:** Marty Loesch. **Governor's Office:** John Mankowski. **Ruckelshaus Center:** Katie Bombico, Branden Born, Jon Brock, Bill Budd, Billy Gaynor, Rob McDaniel, Cheryl Rajcich, Lane Rawlins, Bill Ruckelshaus and Ann Seiter. **Legislative Staff:** Orland Cano, John Charba, Bob Lee and Ethan Moreno. **Guests:** Joel Rupley, Clark County; Ryan Walters, Skagit County. **Facilitator:** Jim Reid.

JOHN MANKOWSKI BRIEFS COMMITTEE ON SKAGIT DECISION

The SSB 5248 Committee's meeting opened with a briefing by the representative of the Governor's Office, John Mankowski, on the Washington State Supreme Court's 13 September 2007 decision on the Skagit County Growth Management Act (GMA) case (*Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board* [No.76339-9]). The text of the Court's decision is on the Ruckelshaus Center website.

The Committee's conclusion is that the decision does not affect its work, a finding that should be communicated in the interim report that will be submitted to the Governor and Legislature on the first of December.

COMMITTEE PROVIDES DIRECTION ON DRAFT INTERIM REPORT DUE 1 DECEMBER 2007

As Section 3 of SSB 5248 mandates, the Committee must provide to the Governor and Legislature an interim report on the status of its work on the first day of December. Ann Seiter has been hired by the Ruckelshaus Center to draft the report on behalf of the Committee. At the meeting she briefed Committee members on the draft outline of the interim report.

As a result of the discussion, Committee members agreed that the interim report should provide the facts about their progress. Committee members anticipate that the report's principal message may

be “We are at the table getting started,” and the content will focus on and detail the process by which the Committee is conducting its business. They also agreed the report should not contain anything that is not considered complete or has not been agreed to by the Committee. For example, in order to avoid confusion or misinterpretation, draft fact-finding documents would not be included in the report. Instead, the report will describe the kinds of facts that are being obtained and analyzed, and the methods for collecting the data and information. At a later point in the Committee’s work, final versions of these materials would be appropriate and useful to display.

Consistent with the interests in keeping the interim report simple and to the point, a suggestion was made to briefly acknowledge that the Committee is aware of the Supreme Court’s decision on the Skagit Case, and to be clear that the Committee’s process is not affected by the decision.

Committee members stated that it is important for the Governor and legislators to understand from the interim report that there is no “scope creep,” and that the Committee is doing what the legislation requires of it. Ann Seiter said the interim report will be in “plain talk language” to reflect the Committee’s interest in being transparent to and accurately understood by interested parties, including the general public.

The context for a discussion about Section 4 of the draft report’s outline was a paper with five ideas for soliciting stakeholder observations and perspectives, desired outcomes, opportunities and barriers. **(The draft outline of the interim report and the paper are attached. This is the version of the paper that was distributed at the meeting. Although it includes the idea of a survey of stakeholders, that idea will not be pursued because of the various problems raised with doing so. Comments on the other portions of this outline are sought from the Committee.)**

From the discussion, it appears that Section 4 of the outline can be described, but the task of soliciting stakeholder views will extend past the timeframe of this interim report. Those views will be reported, per the legislation, but at a later time than this December’s interim report.

The discussion produced these decisions and next steps:

- Each caucus will determine how it wants to work with the Ruckelshaus Center and Jim Reid to gather information about interests, desired outcomes, opportunities and barriers. Jon and Jim will contact each caucus coordinator in the next couple weeks.
- The Ruckelshaus Center will circulate a draft of the interim report to all Committee members within the next two to three weeks.
- Following release of the draft to the Committee, the Ruckelshaus Center will collaborate with caucus coordinators to gather comments from the caucuses on the draft. The Center may circulate another draft before the Committee’s meeting on 20 November.
- At that meeting the Committee will review the most recent draft and may provide additional comments and directions for finalizing it or approve it.
- After some discussion, it was decided to not use a survey to gather information from stakeholders. Some members suggested the Committee should develop a set of questions that each caucus would ask its constituents so that the Committee sends the same messages, asks consistent questions and obtains information that can be compared and contrasted. Finding an

appropriate and systematic way to gather such comments, tailored to each caucus, will be discussed and the Center will assist.

- Throughout this process, the resources of the Ruckelshaus Center are available to the caucuses to assist them in communicating with their constituents if they are interested in and need such assistance.
- The intention was expressed to determine by the November 20 meeting how best to solicit ideas from stakeholders about their interests, observations, and desired outcomes. This method should be reported in the interim report due this December.
- The Committee requested that the Ruckelshaus Center revise how stakeholders, including the general public, access Committee documents through the Center's website. Specifically, the Committee would like people to be able to access process and substantive information without going through a portal and needing to use a password. The Center's staff will revise the site.

REVIEW OF FACT-FINDING PRODUCES GUIDELINES TO ENSURE TRANSPARENCY, EQUITY, AND A SOLID FOUNDATION OF INFORMATION FROM PHASE I

A primary goal of this meeting was to review progress in fact-finding so that the Committee could clarify its interests and needs, and provide further direction regarding the information that the Ruckelshaus Center should obtain on its behalf.

In reviewing existing County Critical Areas Ordinances and proposed revisions to those ordinances, questions were raised about distinguishing factual information and data concerning what is "on the books" in the counties or elsewhere from concerns, which may also reflect facts, about implementation or interpretations being made "on the ground." In addition to identifying what is on the books and flagging the need to examine issues surrounding interpretation or implementation, the discussion also noted: 1) the need to be more explicit in following up on input of this sort and ensuring transparency; and 2) the value of categorizing this type of information so that it could be used to later examine actual practices or to understand where controversy had arisen or might still exist.

The principal interest expressed during this discussion was the Committee's intention to conduct a "gap analysis." Committee members are interested in accurately identifying and understanding what critical areas are protected and how they are protected, what aspects are not protected and why, and the extent of the "gap" between intentions and expectations and the reality "on the ground."

This could effectively consolidate the fact-finding information into a package that reflects the purposes of fact-finding as described by those who were familiar with the preparation of the legislation. The next phase, after this initial fact-finding, is when the Committee will answer these questions: What is the nature of the gap, if any? What would be effective in addressing the gap to achieve the desired outcomes expressed in the legislation concerning a healthy environment and a viable agricultural economy?

During this discussion the Committee also expressed interest in ensuring that the fact-finding process is transparent to Committee members and interested stakeholders and observers, and that the caucuses have equitable opportunities and sufficient time to comment on and provide additional information and data.

To ensure that the fact-finding of phase one of the process provides a solid foundation for identifying and agreeing on solutions, and to ensure a transparent and equitable process, the Committee brainstormed a general framework for sharing information, perspectives, reactions and responses among all Committee members. Elements of this framework are: 1) the Ruckelshaus Center will make it a practice to send to everyone all comments received; 2) the Center will close “the loop” with the sender and caucus from which the comments came; and 3) the Center will provide opportunities for comments by other caucuses before working with them to resolve how the comments will be used. The Center and caucus coordinators will use this framework to develop a policy for ensuring that comments are acknowledged, shared and incorporated into the Committee’s work.

In applying these guidelines to the comments from caucuses on the Critical Areas Ordinances, the Center and caucus coordinators will have a telephone conference call with those who provided comments and those whose reactions or responses are needed to determine how to proceed.

COMMITTEE IDENTIFIES ADDITIONAL FACT-FINDING INTERESTS AND NEEDS

After identifying a general framework for sharing information and comments, the Committee worked with Bill Budd and Branden Born to review progress in obtaining existing regulatory, management and scientific information on agricultural activities and critical areas for the seven areas identified by Section 3 of SSB 5248, and to identify additional information to meet the intent of the legislation.

Again, the Committee’s principal interest was its intention to conduct a “gap analysis.” Committee members are interested in accurately identifying and understanding what critical areas are protected and how they are protected, what aspects are not protected and why, and the extent of the “gap” between intentions and expectations and the reality “on the ground.”

Critical Areas Ordinances (CAOs) and Buffers:

Bill Budd’s preliminary interpretation (subject to further detail and exploration) of the picture that appears to be emerging from the data and information gathered to date about Critical Areas Ordinances is that it indicates that Counties in general are:

- looking to develop flexibility in addressing buffer widths;
- using Best Management Practices (BMPs);
- relying on farm plans and farm management as vehicles for complying with the Growth Management Act (GMA); and
- considering functionality and intensity in modifying buffers.

This is not an evaluation of the efficacy, but simply a first set of observation on the trends in the written codes on the books.

As a result of its discussion with Branden Born, the Committee expressed interest in knowing how much land is protected by CAOs and by other ordinances or means, including easements of various kinds. What percentages of these lands are protected by federal, state or local government regulations, or are privately held or protected? The data as asked for in the legislation is not broad enough to assess this, so suggestions were solicited for seeking the broader set of data.

A challenge in making these determinations may be that we do not know the full extent of the inventory, making it difficult to accurately estimate the “gap.”

Two sources were suggested for the information that the Committee seeks: the Conservation Commission; and a report issued three years ago by the Recreation and Conservation Office (formerly the Interagency Commission on Outdoor Recreation). Brandon will pursue these leads.

Conservation Reserve Enhancement Program (CREP):

The Ruckelshaus Center has gathered the information that the legislation requires it to obtain on the CREP. As a result of the discussion, the Committee expressed an interest in understanding if the program is as successful as intended or as it could be in protecting critical areas. In other words, are many counties participating in the CREP? If participation is low, what factors contribute to this situation? Are CREP lands in critical areas protected by CAOs?

More specifically, the Committee requests:

- An overview of the CREP and how it is funded.
- An explanation or footnote on the matrix (or embellishment of the current “Yes/No” column) explaining why some counties are eligible to participate in the program and why others are not.
- An additional column in the matrix that identifies how many acres in each county are in the program, how many are eligible for the program and, therefore, the “gap” between eligibility and actuality.
- The number of river miles of CREP (rather than spatial data).

An issue raised during the discussion was the need to protect the privacy of landowners, as provided for by law. The Committee’s interests are to more accurately understand how the program works and how it might be made to work more effectively to protect critical areas. The Committee is not interested in gathering information that goes beyond current law governing disclosure of information.

Committee members identified two potential sources for the information sought: the SASY listing from the Department of Fish and Wildlife; and the Water Resource Inventory Areas (WRIAs).

As this discussion was concluding, the Committee discussed examining and assessing other voluntary programs besides CREP and producing a list of those programs (as well as the acronyms by which they are referred to help everyone be able to recognize them). Many of these are under the CRP program.

Conservation Easements:

The Committee’s interest is to understand the value of Conservation Easements as a tool to get property owners to voluntarily protect critical areas.

Members agreed that the Ruckelshaus Center should conduct additional fact-finding to determine if critical areas are being protected with Conservations Easements or through the use of other tools, such as land trusts, Transfer of Development Rights (TDRs), the CREP or buffers. In other words, how much land has been transferred or sold or donated to easements or conservation holdings? And the Committee asked that Branden assess the pros and cons of Conservation Easements as a tool

to protect critical areas, including the relative ease or difficulty of arranging and monitoring easements.

Committee members suggested that sources for additional fact-finding might be: Washington State County Assessors' Association (Don Stewart); Cascade Land Conservancy and/or the Columbia Land Trust; and the State Association of Land Trusts.

Water Quality:

Branden stated that information that has been gathered on water quality from the 303D list and TMDLs will not answer the questions of most relevance and importance to this process because, while there are many "data points," the information monitors a narrow range of impacts, thus making it difficult to extrapolate the findings across water bodies. Information the Committee seeks may not currently exist, and, therefore, agencies that Branden has contacted have been receptive and interested in working with the Center to find or generate it (including some currently ongoing work at the Department of Ecology).

The Committee agreed that the Center should continue to scope the issues around water quality and other protections by analyzing the lessons learned from cases in the Pacific Northwest. Two examples that were recommended were Whatcom County's project on the impacts of dairies on the Nooksak River, undertaken in cooperation with the Lummi Nation, and a Hood River project that resulted in Best Management Practices (BMPs) for tree fruit. Another project that was mentioned was a project in Yakima and Sunnyside in which the Department of Ecology worked with local governments and agricultural and environmental interests.

Committee members suggested that additional sources for information on water quality could be the Puget Sound Ambient Monitoring Program (PSAMP) and the Governor's Monitoring Forum.

Federally Approved Salmon Recovery Plans and Impacts of Agricultural Activities on Puget Sound Recovery Efforts

The Ruckelshaus Center is scoping these areas following direction provided by the Committee in September, and will report back to the group at the November meeting.

Additional Fact-Finding: Information in Addition to the Seven Areas in SSB 5248

The caucuses will review the 30 August 2007 list of potential additional information and inform the Ruckelshaus Center of their reactions or further recommendations. The Center will circulate these preferences among the entire group and work with the Committee in November to confirm what additional information will be gathered and assessed.

The agriculture caucus is listing the environmental benefits of agricultural activities, including benefits such as flood control, water filtration, habitat for wildlife and birds, connectivity, and the cost to the public if man-made infrastructure, rather than agriculture, were needed to provide these protections and benefits. The caucus will provide this list to the Ruckelshaus Center, which will distribute it to the Committee.

From the earlier discussions at this meeting it was agreed that the Center would begin to obtain information on the implementation of CAOs and on the challenges of monitoring Conservation Easements, including whether or not the costs of monitoring are limiting factors in the use of such easements.

In addition, in an initial response to the Aug 30 list, and in an effort to begin to understand the full impact of existing mandatory, voluntary or pending programs, Committee members requested that the Center gather information on:

- the Growth Management Act as it impacts agriculture and critical areas;
- non-GMA programs with which agricultural activities must comply to gain a complete picture of the regulatory regime under which agriculture exists;
- innovative county programs, including any that may have been postponed because of the adoption of SSB 5248; and
- what other states are doing to protect the environment, including critical areas, and the viability of agriculture.

COMMITTEE REVIEWS PROPOSALS TO ENSURE TRANSPARENCY OF THE PROCESS

The Committee reviewed proposals from the Ruckelshaus Center for ensuring that its process is accessible and understandable to all interested and affected stakeholders. The Committee agreed that the Center should revise its website so that interested parties do not need to use a password to access Committee documents and information about the process. The website should also include “archival” materials, including previous meeting agendas and summaries, meeting dates and other basic information, and the names and contact information of Committee members . (The Ruckelshaus Center will send a revised roster of Committee members to everyone in the next week so that everyone can check their information for accuracy.) The web site could then serve as an archive of Committee work. Normally only final and completed items would be placed on the site, unless there was an explicit desire to seek reactions, so that confusion about what represents C the Committee’s work can be avoided.

In reviewing its calendar for the rest of 2007 and the first half of 2008, the Committee offered the Center these ideas:

- The Committee will meet only once in November, on the 20th. An important task at this meeting will be reviewing and discussing the draft interim report to be submitted to the Governor and Legislature on 1 December.
- The Committee meeting in January 2008 should be held before the legislative session convenes on 14 January.
- The Committee meeting currently scheduled for 13 March should be postponed because that is the second-to-last day of the session.
- Meetings of the Committee during the first quarter of 2008, while the legislature is in session, should be held in Olympia.

Finally, as part of the Committee’s obligation to report to the Governor and Legislature by 1 December, and to conduct a transparent process, the Committee will present an update to a joint session of the House committees on agriculture and natural resources and on local government on 29 November. The Center will circulate an outline of the presentation for comment by the caucuses.

Attachment 1

Preserving Agricultural Viability and Protecting Critical Areas:

Progress Report No. 1 to the Washington State Legislature

ELEMENTS FOR REPORT OUTLINE: *September 26, 2007*

- 1. Background, purpose and authorizing legislation**
Provide an overview of the history and intent of the legislation, emphasizing the Legislature's directive to seek cooperative solutions in balancing resource land use. Provide a brief overview of the benefits of viable agriculture and a clean environment. Describe the purpose and scope of the process, as defined by the SSB5248 committee (utilize language from the ground rules).
- 2. Description of the process**
Describe how the Ruckelshaus Center has organized itself to conduct stakeholder discussions and fact finding to date, and how it intends to proceed for the duration of the project.
- 3.* Results of fact finding:** *“Identify existing regulatory, management, and scientific information related to agricultural activities and critical areas including...”* Provide a brief status report related to each of the seven areas specified in the legislation, summarizing and highlighting information assembled to date.
 - 3.1 Critical area ordinances adopted under chapter 36.70A RCW;
 - 3.2 Acreage enrolled in the conservation reserve enhancement program;
 - 3.3 Acreage protected by conservation easements;
 - 3.4 Buffer widths;
 - 3.5 Requirements of federally approved salmon recovery plans;
 - 3.6 The impacts of agricultural activities on Puget Sound recovery efforts;
 - 3.7 Compliance with water quality requirements;
 - 3.8 Other
- 4.* Summary of stakeholder discussions**
 - 4.1 Stakeholder concerns
 - 4.2 Desired outcomes
 - 4.3 Opportunities
 - 4.4 Barriers
- 5. Next steps:** Provide a draft schedule and work plan for the group in 2008. Describe how the group intends to meet the dual objectives of crafting recommendations and building a coalition for support as the recommendations move to the Legislature.

* These elements taken from Section 3(3) of the legislation

Attachment 2

DRAFT 1
10/16/07

THE SSB 5248 PROCESS

“Stakeholder concerns, desired outcomes, opportunities, and barriers”

Section 3, paragraph 3 a) (concerning fact finding and stakeholder discussions) notes that

...These discussions must identify stakeholder concerns, desired outcomes, opportunities, and barriers.

In an effort to respond to these requirements and in keeping with effective collaborative process practices, we propose a multi-part, but simple, process to surface these items. The intention is to get in-depth views from individual representatives at the table, as well as caucus views, and full group discussion, and create opportunities for others, not at the table to provide input as well. We have held off gathering this type of input. But, it is probably time, and possibly, we would be ready to include a preliminary summary of these items in the interim report, with greater detail at a later time.

In addition to and in keeping with the legislative requirements, gathering this type of input is extremely important to identifying, on a preliminary basis, where there may be common ground, major gulfs, and to help understand underlying ideas and concerns. Usually such discussions contribute to how constructing schedules and agendas and to ensuring that these issue come out in the most constructive ways, and to foster even greater openness and exploration within the group.

In addition, given that the caucuses are an important component of the process, and the caucuses at the table are representing others not at the table, ensuring that caucuses can also play a key role in this outreach and determining concerns, desired outcomes, opportunities and barriers, it would also be important to factor in these aspects of the process.

Finally, because so many people have been concerned about these issues, it will be important to capture, as best we can, views of many individuals and groups who could be directly affected, or would be concerned that they might be. The process will have more complete input by having done so, and will have demonstrated the transparency and permeability of the process.

The following steps and actions would help us achieve these goals, and could be modified to better fit the process. We present them for your comment and consideration.

1. **Obtain individual views from each representative and alternate**—since those at the table will be the most immersed in the issues and the data being developed, and have also been closely involved in these issues, this will be a primary source of input. These would be done by individual interviews in person or by phone with representatives on the committee.
2. **Compile and summarize for committee discussion.** Provide a summary of the main issues, trends or principles to the committee for discussion. The summary would not identify individual views and input, but would provide the information in categories and in other summary forms. Presentation and discussion at committee meeting. We would attempt to be ready to do this by November 20.
3. **Caucus discussion and input.** Invite the caucuses to discuss the summary and to add commentary or other input and deepen the discussion of concerns, outcomes, opportunities and barriers. Caucuses would discuss and suggest things to add, explore or focus with the full committee. Plan to do this at the December meeting.
4. **Develop a survey to gain broader input.** Use the results of the summary and these discussions to form a survey that could be sent by the caucuses, or by the Center on behalf of the caucuses to relevant mailing lists of stakeholders or other interested parties not at the table. Gather and review the input by caucus, which could do other follow up and interpretation, and overall. This information could be organized so that responses from different geographic areas, industries, affiliations could be grouped. By doing the survey after the initial gathering and discussion, a better, more focused survey could be developed. (Probably, other means will be devised of getting input later in the process through holding focus groups or other ways.) Survey to be sent to relevant mailing lists that we would collectively identify or agree to. Develop in January, send in February.
5. **Web portal.** Provide a means for those who might not be reached by the above channels to give input, perhaps using the same survey. Survey would be placed on the project web site for those who might access it. Set up in February.