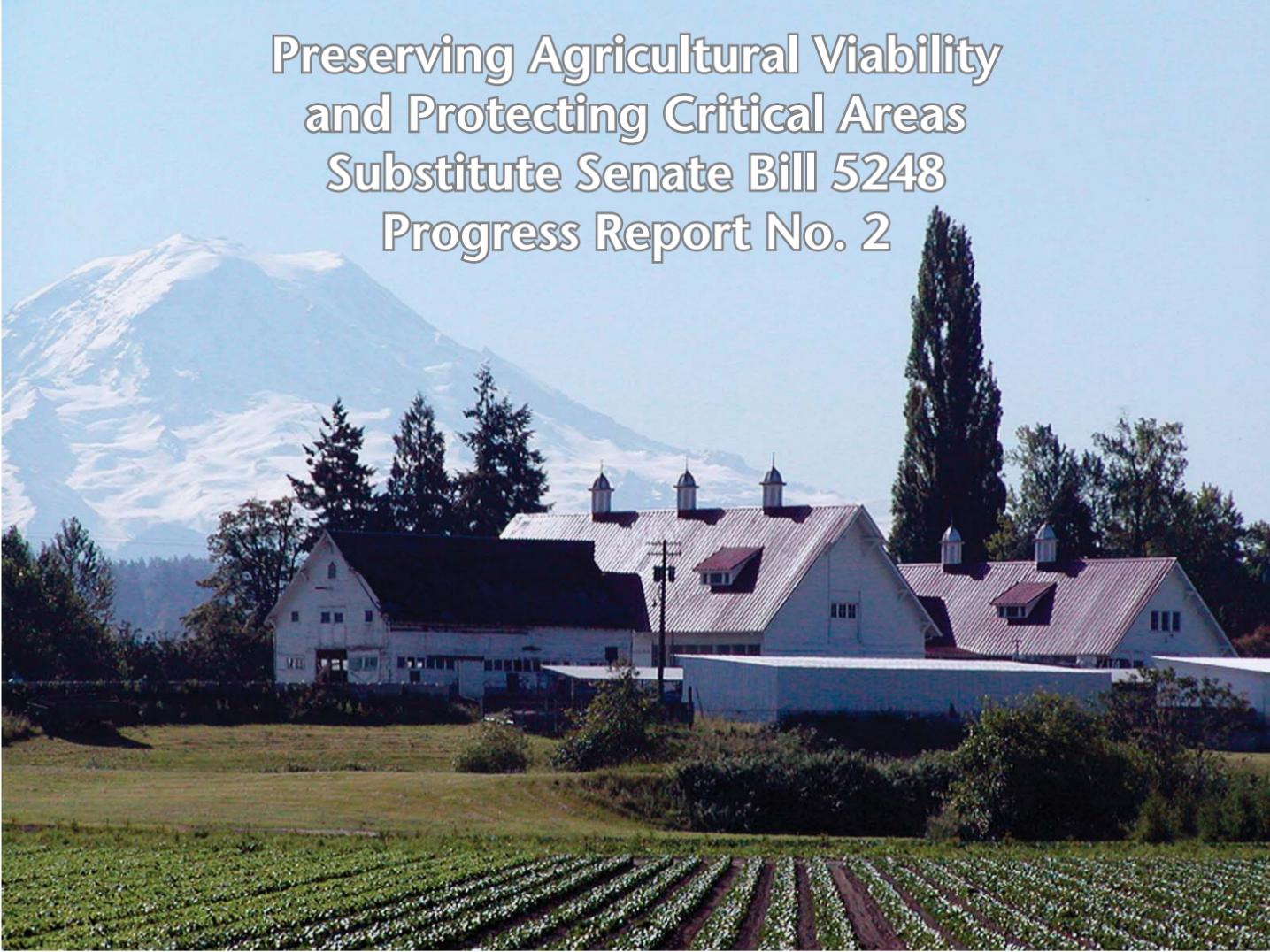


THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON



Preserving Agricultural Viability
and Protecting Critical Areas
Substitute Senate Bill 5248
Progress Report No. 2

Submitted to the
Washington State Legislature and Governor Christine Gregoire
from the SSB 5248 Committee

December 1, 2008
Revised 12/10/08

THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON

December 4, 2008

Governor Christine Gregoire
Washington State Legislature

RE: Progress Report No. 2 related to Substitute Senate Bill 5248
Submitted by the William D. Ruckelshaus Center

The William D. Ruckelshaus Center is pleased to submit the second progress report on our activities specified in Substitute Senate Bill 5248. The task set forth by the Legislature in SSB 5248 was to examine the interactions between agricultural activities and the environmental regulation of critical areas, and to work with participating stakeholders to identify innovative approaches that will advance both environmental protection and agricultural viability goals. This report is the second of three reports required by the legislation and is submitted on behalf of the SSB 5248 Committee.

As we reported last year, we are working with a broadly representative committee that has been formed to oversee the project, comprised of agricultural and environmental organizations and county and tribal governments. As noted then, the first several months of the project concentrated on forming the committee and building relationships across the four caucuses as a basis for constructive dialogue and beginning the initial fact finding. Since January, we have been working on the seven fact-finding elements as required by the legislation. Fact-finding research is being conducted by faculty and graduate students at Washington State University and the University of Washington, supplemented by case examples and other expertise available in Washington State. The review of this information will be completed in the coming months. Fact-finding has produced very useful discussion in the committee that will lay the groundwork for communication and common understanding during the development of final recommendations.

The 5248 legislation also requires the identification of stakeholder concerns, desired outcomes, opportunities and barriers. This has been done in a number of ways, including a two-day retreat in May, 2008 during which the committee members' viewpoints were extensively discussed, and in follow up discussions in September and November. These frank discussions suggest fruitful areas of commonality such as the desire for certainty, flexibility, and stability in the policies that will be in place. As the legislation requires, there

has been substantial discussion of how to achieve "...outcome based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches," and about "ways to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches." These are challenging, but the discussions are focused and constructive and show a commitment to finding a workable solution.

The areas of common ground and likely resolution are still very preliminary and conceptual in nature, but the developing framework for solutions includes voluntary approaches to protect and enhance critical areas while protecting farm landowner privacy and business operations. The committee is also discussing ways to ensure that improvements to critical areas will be implemented and results can be appropriately monitored. In 2009 we will work to translate these discussions into a set of recommendations for the final report, due in September.

While much progress has been made, the greatest challenges remain. We appreciate the opportunity to serve the State of Washington in finding solutions for this important, and often contentious, subject. We will continue to keep representatives from the Governor's Office and Legislative staff informed about our progress, and welcome questions and input from the Governor and Legislature at any time.

On behalf of the SSB 5248 Committee,



V. Lane Rawlins
Interim Director



Bill Ruckelshaus
Chairman



Jon Brock
Project Director

Preserving Agricultural Viability and Protecting Critical Areas
SSB 5248 Progress Report No. 2
December 1, 2008

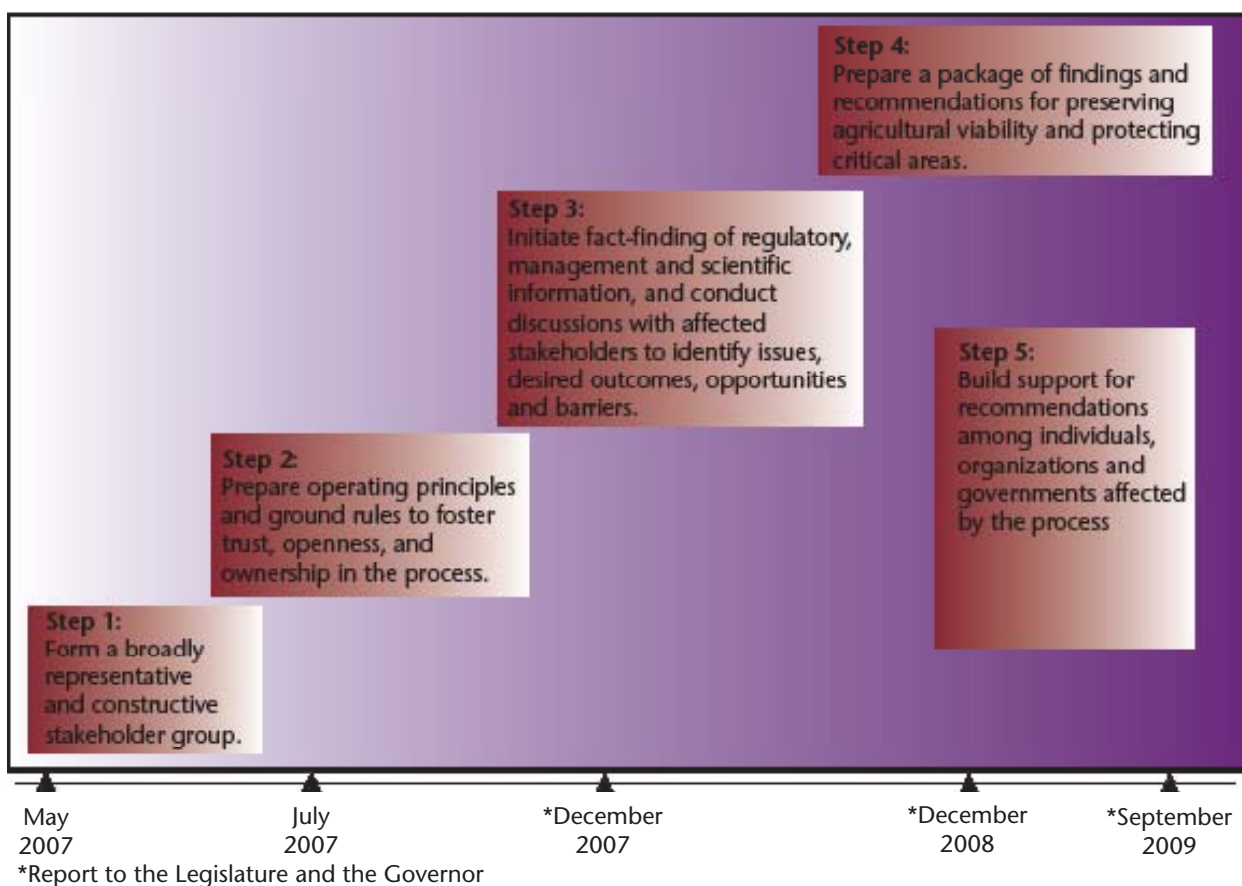
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1. Introduction

Substitute Senate Bill 5248 was adopted by the Washington State Legislature in April 2007 following continuing controversy over the designation of critical areas under the Growth Management Act and regulatory requirements for agricultural activities. The bill established a temporary pause in the adoption and/or amendment of provisions of critical areas ordinances related to agricultural activities. The Legislature requested that “willing participants” from agricultural and environmental organizations and tribal and local governments embark on fact-finding and discussion to prepare recommendations for the preservation of agricultural lands and the protection of critical areas. The William D. Ruckelshaus Center, a neutral policy consensus center operated by Washington State University and the University of Washington, was designated to coordinate fact-finding research and facilitate discussions.

The project is operating through a series of steps (figure 1), largely derived from the legislation, that began by forming a broadly representative stakeholder committee. Additional steps in the 5248 process include creating and maintaining opportunities for open and constructive dialogue, engaging in fact-finding, and preparing a package of findings and recommendations. The enclosed progress report is the second of three reports required by SSB 5248. The first report, which was submitted on December 1, 2007, described the process of forming the 5248 committee, early discussions, and the development of ground rules. The present membership and composition of the 5248 committee is set forth in Appendix A. The emphasis of the 2008 effort has been to carry out required and supplementary fact-finding; allow each of the four caucuses to communicate its interests and desired outcomes, opportunities, and barriers; and begin developing a framework for solutions. A final report is due September 1, 2009 containing the committee’s recommendations.



The goal of the SSB 5248 process is to develop recommendations that will ensure the protection of environmentally sensitive areas in ways that also support the preservation of farmlands and a strong farm economy. The committee met approximately once a month throughout most of 2008. Four coordinators, one representing each of the agricultural, environmental, tribal government, and local government interests, were designated by the members for more frequent informal interaction in preparatory work sessions and to assist with coordination and communication.

Much of the activity during 2008 was aimed at fact-finding. This consisted of defining the scope of needed fact-finding in each of the seven topic areas mandated in the legislation, and then reviewing the information in the full committee. In an effort to shed light on subjects that have been in conflict in the past, the fact-finding was done in a manner that sought to help the committee work from a basis of common information. For example, by producing an inventory of the critical areas protections presently on the books in each county around the state, the committee was able to clarify and compare what tools are presently used, and what is and is not required under current county critical areas policies affecting agriculture. In another fact-finding task, the committee also gained a common understanding of how conservation easements are presently used to protect critical areas, and some of the strategic opportunities and challenges to the use of easements. Overall, the fact-finding process has been intended to achieve a common basis of information, reduce unnecessary conflicts that result from lack of information or other sources, and to identify some potential tools and barriers in existing policies and programs.

In pursuing the legislative requirement for discussions to identify stakeholder concerns, desired outcomes, and barriers, several meetings were devoted to opportunities for the four groups to make in-depth presentations, voice questions, and clarify their understanding of the other groups' concerns or goals. Throughout the meetings in 2008, and crystallizing at a two-day retreat in May, committee members expressed the importance of achieving certainty. Agricultural representatives defined certainty as the ability to retain a viable, sustainable farm sector that can be passed to future generations. Similarly, tribal representatives described the cultural and economic importance of being able to continue fishing as a way of life. The environmental caucus expressed its goal to ensure viable, sustainable and diverse species, habitats and ecosystem functions for the future. County representatives indicated their support for all these goals, and the need to resolve conflicts over critical areas in a constructive, predictable, and affordable way. The desire to enhance certainty and stability in the policy and programs related to critical areas protections, and reduce continual challenges and litigation, was a common theme expressed by many committee members.

Following these discussions, a conceptual framework was developed to help guide further exploration and analysis of possible policy solutions related to critical areas protections and agricultural activities.

"We're all looking for certainty - it's how to get it that we need to talk about."

~ 5248 Committee Representative

2. Status of Fact-Finding

Required fact-finding items: Substitute Senate Bill 5248 directed the William D. Ruckelshaus Center to conduct fact-finding related to critical areas and agricultural activities in seven topic areas (see box). During 2007-2008, information was assembled by the Ruckelshaus Center based on sources and data that were accessible, and the results were summarized in a series of fact-finding papers for use by the 5248 committee. To date, five draft papers are close to completion have been presented to the committee, and additional review and follow-up fact-finding activities are occurring.

The summaries of the five draft fact-finding papers (enclosed in Appendix B) cover the following subjects:

1. Content of county critical areas ordinances related to agriculture, including requirements concerning buffer widths
2. Conservation Reserve Enhancement Program and other conservation programs
3. Conservation easements
4. Compliance with water quality program requirements
5. Requirements of federally-approved salmon recovery plans

"The fact-finding must identify existing regulatory, management, and scientific information related to critical areas including, but not limited to:

- *critical areas ordinances adopted under 36.70A RCW;*
- *acreage enrolled in the conservation reserve enhancement program;*
- *acreage protected by conservation easements;*
- *buffer widths*
- *requirements of federally approved salmon recovery plans;*
- *the impacts of agricultural activities on Puget Sound recovery efforts; and*
- *compliance with water quality requirements."*

~SSB 5248, Sec. 3 (3) (a)

The committee has not yet received a briefing on the required fact-finding topic regarding the impact of agricultural activities on Puget Sound recovery efforts. The 5248 committee is scheduled to receive briefings on the Puget Sound Action Agenda following its release by the Puget Sound Partnership in December 2008, and the Ruckelshaus Center will then complete additional follow-up work on salmon recovery efforts in Puget Sound. The Ruckelshaus Center is also preparing, on behalf of the committee, a fact-finding paper regarding the scientific literature surrounding buffers as a method used or recommended to protect riparian areas.

Speakers and panel presentations: Supplementing the fact-finding discussions were panel presentations on monitoring and conservation easements, and speakers to add information and answer questions about the Conservation Reserve Enhancement Program and Puget Sound salmon recovery. Other panels and presentations are described under the case examples section below.

- **Monitoring:** The State of Washington has undertaken an effort to coordinate the many monitoring programs currently being implemented by local, state, tribal, and federal governments, businesses, and non-governmental organizations for natural resources. An overview of the effort, known as the State Monitoring Forum, was presented by Bruce Crawford (now with NOAA). The program is intended to look at improving cost effectiveness of monitoring, coordinating monitoring of different programs, and developing different scales for monitoring (local, regional, state-wide).

Additionally, Melissa Gildersleeve of the Washington Department of Ecology provided information on water quality monitoring programs associated with the Department's responsibilities under the Federal Clean Water Act. Ecology conducts both implementation monitoring (Were water clean-up recommendations implemented?), and effectiveness monitoring (What effect did the actions have in improving water quality?).

- **Conservation easements:** A panel presentation provided information to supplement the materials in the fact-finding paper. Presenters included Chris Hilton of the Whidbey Camano Land Trust, Tom Dean of the Vashon Maury Land Trust, Lisa Younger of The Nature Conservancy, and Kammie Bunes of the Recreation and Conservation Office. The speakers noted that farmland preservation easements are a relatively new concept compared to habitat conservation easements. They indicated that protecting farm land does not necessarily protect farms, since agriculture is affected by many other factors. The speakers also stated that public and private funds are limited, and thus the public agencies and/or private organizations that are negotiating easements with landowners are attempting to obtain strict assurances that the property will be maintained according to the intended objectives. The need to use funds strategically to target the "best, most important places" for protection was also mentioned.

- **Conservation Reserve Enhancement Program (CREP):** Carol Smith from the Washington Conservation Commission presented information on program implementation and effectiveness. Smith stated that the requirements for buffer widths have been modified downward but the most common buffer width chosen by landowners is 180 feet. Participation in the CREP program has been particularly high in Whatcom County and in Southeast Washington. She noted that program participation had not been substantially affected by commodities prices, and attributed good participation, in part, to the work of local conservation district staffs. More information on this program is contained in the fact-finding paper summary in the appendix.

- **Salmon Recovery:** Joe Ryan, the salmon recovery director for the Puget Sound Partnership, provided comments about salmon recovery and agriculture issues. He indicated that the salmon recovery plans rely largely on existing land use mechanisms to protect habitat, and that the federal supplement to the Puget Sound Salmon Recovery Plan contains a statement that there is substantial uncertainty whether the plans will actually achieve recovery. Ryan stated that a pilot program is now underway in the San Juan Islands to study the effectiveness of land use laws in protecting nearshore habitats.

Case examples: The 5248 committee has heard several case examples where local communities have attempted to develop and implement agriculture and critical areas programs that address the dual goals of preserving agriculture while protecting critical areas. During 2008, the committee received presentations from organizations that have programs related to the objectives of the SSB 5248 process in protecting critical areas and supporting agricultural viability: Whatcom Conservation District, Clark County, and the Nisqually River Council. The committee also received a briefing on a voluntary program operated by the Washington Farm Bureau concerning worker safety. These case examples were chosen because they included incentive programs, with varying approaches to standards setting, technical assistance, monitoring, and ongoing dialogue and problem solving. The examples were not chosen to reflect any preferred approach or solution, but to bring forward examples of local approaches to similar problems that have been tried in Washington State. Key questions for the case presenters were to explain how the process was initiated, who participated, goals and outcomes of their programs, program features, the status of implementation and what safeguards were included to ensure the level of participation was adequate.

Notes and common elements from the case example presentations are described in Appendix C. The cases in Whatcom and Clark Counties involved the collaboration of multiple local stakeholders in the development of the county's critical areas policies affecting agriculture, while the Nisqually example has been a broader, ongoing collaborative process in the watershed. All three cases described the use of voluntary measures as a constructive starting point for farm programs in critical areas. Balancing landowner privacy and economic viability with the need to monitor compliance was a major consideration. The speakers from the case examples asserted that voluntary compliance could stimulate landowners to exceed minimum regulatory requirements. The revisions to the Critical Areas Codes in Clark and Whatcom Counties are recent, and monitoring to date cannot determine whether the programs will be effective. Representatives from the case studies indicated that there are several elements that aid participation and implementation: sufficient technical assistance in the field, good leadership and a cooperative atmosphere, comprehensive monitoring and reporting of results, ongoing community education, and awareness that a regulatory backstop is in place or could be brought forward by one or more stakeholders or governmental entities. Funding to support protection and restoration actions - such as technical assistance, comprehensive monitoring and education, is frequently difficult to obtain and is sporadic in nature, thus limiting program effectiveness, certainty and sustainability.



Photos courtesy Whatcom Conservation District

Wetland restoration project in Whatcom County before and after:

This CREP Project was planted in 2001 with 15,100 seedlings on 30.2 acres of stream buffer. It is located in headwaters of Bertrand Creek. The average buffer width is 150 feet and the total length of buffer (each side) is 8,755 feet.

The left aerial photo was taken in the spring of the first year after site prep but only partially planted at the time. The right aerial photo was taken in the winter of 2007, 6 years after planting.



Photo courtesy Whatcom Conservation District

Wetland restoration project in Whatcom County

3. Efforts to Build a Framework for Solutions

Caucus presentations and discussions: In keeping with the Legislature's direction to seek "common ground" related to agriculture and critical areas, the 5248 committee has had numerous discussions in 2008 to explore elements of a solution. Each of the four caucuses presented its concerns, desired outcomes, opportunities and barriers during the spring of 2008. In-depth discussion occurred during a two-day retreat in May. A few key points of discussion from these presentations are summarized in Table 3-1. The table is laid out to organize some of the points that were made by each caucus as they addressed the major elements of SSB 5248, i.e. outcome-based solutions, voluntary and incentive programs, and the consideration of regulatory approaches as a last resort. Committee members from many perspectives expressed their desire to achieve long-term solutions and strengthen the ability for communities to use collaboration rather than conflict in improving agricultural viability and critical areas.

Preliminary elements for building solutions currently under discussion: Drawing from the caucus discussions, the Ruckelshaus Center has been working with committee members in the fall of 2008 to define some of the key elements that may provide a framework for solutions. The fact-finding information and case examples have been used to explore some of these elements further - such as the use of voluntary and incentive programs and monitoring and assessment, and otherwise find alternatives to traditional regulation that can ensure both environmental results and a strong agriculture economy. It is important to note that the list of elements for a framework for solutions is very preliminary at this time and caucuses have not yet agreed to individual elements or developed details or proposals. The framework list is a step that takes the perspectives expressed by the individual caucuses and combines them into a set of mutual interests and common elements that may be used in the development of more detailed solutions and proposals.

The issues that led to SSB 5248 have been contentious for several years and there have been many attempts to "resolve" them at the Legislature, in courtrooms, and at the ballot box. The discussions of potential solutions have been constructive during 2008, but the solutions remain conceptual at this time and many details remain to be discussed. The members of the 5248 Committee are continuing a good faith effort to find a mutually agreeable and workable solution for critical areas and agricultural lands, even if there is not 100% agreement on all of the features.

Table 3-1: Summary of SSB 5248 Stakeholder Goals and Concerns Expressed at Meetings January - May, 2008

Purpose expressed in SSB 5248	Agriculture	Environmental	Tribal Government	County Government
<p>Goals and Interests: The SSB 5248 legislation discussed the importance of making progress in <i>“resolving, harmonizing, and advancing commonly held environmental protection and agriculture viability goals.”</i></p> <p>In the meetings from January through May, many of the caucuses have expressed the importance of achieving certainty. How have these overarching goals and interests been described?</p>	<p>Viable, sustainable farm sector that can be passed to future generations.</p> <ul style="list-style-type: none"> • Ability to continue farming as a way of life; ability to plan for the future • Retain a critical mass of land and services that can support a working agricultural sector 	<p>Viable, sustainable species, habitats and diverse landscapes for future generations.</p> <ul style="list-style-type: none"> • Protect /restore healthy ecosystem functions including biological functions (breeding, food and survival for plant and animal species (salmon and more)); physical functions (clean air and water, flood protection); and to support cultural and aesthetic values. • Ensure that there is enough area and function protected to create a critical mass of productive and connected habitat for the future. • Support a working agricultural sector, and ensure that lands subject to flexible or incentive-based critical area regulations are enrolled in programs to avoid conversions of agricultural lands. 	<p>Viable, sustainable, and harvestable levels of species reserved by treaties for ceremonial and subsistence needs and economic livelihood for future generations.</p> <ul style="list-style-type: none"> • Ability to continue fishing as a way of life. • Ensure that actions that are taken contribute to salmon viability. 	<p>Promote the viability of agriculture and critical areas while maintaining a productive quality of life for county citizens.</p> <ul style="list-style-type: none"> • Ability to resolve conflicting goals related to agriculture and critical areas without continual legal challenges and conflict. • Reduce the incidences of conflict as well as the cost to taxpayers and participants.

Purpose expressed in SSB 5248	Agriculture	Environmental	Tribal Government	County Government
<p>Outcome based solutions: SSB 5248 indicates that the participants must examine, <i>“innovative solutions including, but not limited to, outcome-based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches.”</i></p> <p>What are the characteristics of successful outcome-based, voluntary and incentive programs?</p>	<ul style="list-style-type: none"> • Ability to minimize regulatory and political uncertainty; • Retain or improve the flexibility to manage operations across different types of farms and situations, and to take advantage of changing market opportunities; recognize regional differences (no “one size fits all” approach) • Identify incentives that will motivate farmers and reduce fear of regulatory intervention • Simple to implement 	<ul style="list-style-type: none"> • Simple to follow • Verifiable, able to see progress or lack thereof. • Can adjust if not working; use adaptive management. • Importance of encouraging participation and assessing progress. 	<ul style="list-style-type: none"> • Ensure that the required steps are clear, whether or not they occur in a regulatory framework. • Ensure that actions are related to known factors that affect the viability of fish 	<ul style="list-style-type: none"> • Identify programs that can be efficiently administered by counties • Solutions must be simple enough for counties to carry out. • Enhance the counties’ ability to use collaborative processes to resolve conflict.
<p>Monitoring and Assessment: What are some elements for a successful monitoring and assessment program?</p>	<ul style="list-style-type: none"> • Monitoring and assessment must protect landowner privacy. • Several successful agricultural monitoring programs provide a bridge between landowners and regulators as a “safe harbor.” • Ensure that requirements on agriculture are actually effective in achieving the intended purposes. 	<ul style="list-style-type: none"> • Retain ability to gauge progress towards compliance and protection; • Ensure that program flexibility also provides certainty for protection, and that timely mechanisms are available if results on the ground are not achieved. 	<ul style="list-style-type: none"> • Ensure that compliance is transparent enough to evaluate. • Ability to observe what’s being done to protect and restore critical areas, measure progress, and make changes if progress is lacking. 	<ul style="list-style-type: none"> • Provide clarity about expectations and requirements for monitoring and adaptive management. • Provide clarity about the use of science in decisions affecting critical areas. • Address responsibilities for cost of monitoring and assessment.

Purpose expressed in SSB 5248	Agriculture	Environmental	Tribal Government	County Government
<p>Regulatory Backstop From SSB 5248: <i>"Examine ways to modify statutory provisions to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches."</i> What would be the elements for a regulatory backstop using existing or new regulations to achieve desired outcomes?</p>	<ul style="list-style-type: none"> • Harmonize the myriad regulations and mandates from federal, state and local government. • Clarify and simplify requirements and expectations so that compliance is less complicated and burdensome. • Clearly identify the repercussions that result from non-compliance. • Use regulatory fixes as a last resort. 	<ul style="list-style-type: none"> • Strengthen the ability to stem the loss of critical areas and their functions, including wetlands, riparian areas, fish and wildlife habitat, and important upland habitats. • "Backstop" the use of voluntary measures with regulations to ensure protection of agriculture and the environment if those voluntary measures do not achieve desired outcomes. • Seek ways to reduce litigation and emphasize collaboration. 	<ul style="list-style-type: none"> • Salmon habitat is degraded and existing regulations do not address the need to restore habitat function. • Ensure that regulations are enforceable over the long term. • Ensure that enforcement mechanisms exist if voluntary compliance and incentives fail to achieve recovery. 	<ul style="list-style-type: none"> • "Backstop" the use of voluntary measures with regulations to ensure protection of agriculture and the environment if those voluntary measures do not achieve desired outcomes. • Emphasize education to build public support and participation. • Address funding issues for enforcement and monitoring • Seek ways to reduce litigation and emphasize collaboration.

4. Next Steps

The 5248 committee and the William D. Ruckelshaus Center look forward to wrapping up the work in developing a set of recommendations for agriculture and critical areas in 2009. Remaining steps in the process include the following:

Finalize remaining scheduled fact-finding tasks:

- Final reviews of the draft fact-finding papers.
- Complete a draft and review of the fact-finding paper on science related to buffers as a tool for riparian protection, and revise as needed.
- Obtain a briefing on the Puget Sound Action Agenda and discuss areas of possible overlap and opportunities for constructive input; complete fact-finding on Puget Sound Salmon Recovery.
- Commission any further work needed fact-finding or research.

Work toward tentative agreement on the framework for solutions:

- Incorporate additional positions or solutions into the framework, highlighting areas of tentative agreement and narrowing the focus as discussions proceed.
- Caucuses work internally to refine areas of tentative agreement and issues for further exploration and discussion.

Transition the framework of solutions into draft recommendations: During 2009, the 5248 committee members and the Ruckelshaus Center will work on developing and refining the elements in the framework into a set of specific draft recommendations for caucus review. As the legislation specifies, the committee will work on policy and financial options or opportunities to address the issues and desired outcomes, seeking innovative solutions that “to the maximum extent practicable” incorporate voluntary programs, and use “regulatory constraints as a last resort if desired outcomes are not achieved through voluntary programs or approaches.”

Provide outreach to review draft recommendations: The legislation also requires the Ruckelshaus Center to “work to achieve agreement among participating stakeholders and to develop a coalition that can be used to support agreed upon changes or new approaches to protecting critical areas...” Committee members and Ruckelshaus Center program staff will work with broader constituents to explain elements of the recommendations and obtain feedback in an effort to comply with the terms of this latter provision.

“Let’s find ten things we can agree on and work toward them and expand them with real projects.”

~5248 Committee Representative

A final set of recommendations and report is due to the Governor and Legislature on September 1, 2009.

APPENDICES:

- A. Current members of the SSB 5248 Committee
- B. Summaries of Fact-Finding Papers
 - B-1 Content analysis of Critical Areas Codes
 - B-2 CREP and Conservation Reserve Programs
 - B-3 Conservation easements
 - B-4 Water quality requirements
 - B-5 Requirements of federally-approved salmon recovery plans
- C. Summaries of Case Examples
 - C-1 Whatcom Conservation District
 - C-2 Clark County
 - C-3 Nisqually River Council
 - C-4 Washington Farm Bureau Workers' Compensation Insurance Program
- D. General information on the William D. Ruckelshaus Center
- E. Text of SSB 5248
- F. Summary of William D. Ruckelshaus Center Tasks Under SSB 5248

APPENDIX A: Members of the 5248 Committee

Representatives and Alternates on the SSB 5248 Committee

Agriculture:

- *Scott Dahlman, WA State Grange*
- *Jack Field, WA Cattlemen's Association*
- *Jay Gordon, WA State Dairy Federation*
- *Jim Hazen, WA State Horticultural Association*
- *Mike Shelby, Western WA Agricultural Association*
- *John Stuhlmiller, WA State Farm Bureau**
- *Dan Wood, WA State Farm Bureau*
- *Jeanne McNeil, WA State Nursery & Landscape Association*
- *Mike Schwisow, WA State Water Resources Association (alternate)*
- *Terry Willis, Olympic View Dairy (alternate)*

Environmental:

- *Len Barson, The Nature Conservancy**
- *Nina Carter, WA Audubon Society*
- *David Bricklin, Futurewise*
- *Joe Ryan, Washington Environmental Council*
- *Mo McBroom, Washington Environmental Council (alternate)*
- *Bill Robinson, The Nature Conservancy (alternate)*

Local Government:

- *Eric Johnson, WA State Association of Counties**
- *Betty Sue Morris, Clark County Commissioner*
- *Harry Reinert, King County Dept. of Development & Environmental Services*
- *Ron Walter, Chelan County Commissioner*
- *Rick Miller, Franklin County Commissioner (alternate)*
- *Don Munks, Skagit County Commissioner (alternate)*

Tribal Government:

- *Bob Kelly, Nooksack Tribe*
- *Marty Loesch, Swinomish Tribe**
- *David Troutt, Nisqually Indian Tribe*
- *Larry Wasserman, Swinomish Tribe*

** Caucus Coordinators*

APPENDIX B: Summaries of the fact-finding papers

- B-1 Content analysis of Critical Areas Codes
- B-2 CREP and Conservation Reserve Programs
- B-3 Conservation easements
- B-4 Water quality requirements
- B-5 Requirements of federally-approved salmon recovery plans

Appendix B-1: Agriculture and Critical Areas Ordinances

Title and Authors: "Analysis of Language of Selected Elements of the Critical Areas Ordinances of Washington Counties"-- April 30, 2008 draft
William W. Budd, PhD & Heidi Sowell, MS

Scope of Research:

Review of critical areas ordinances of Washington counties. Specifies which counties incorporate an exemption of agricultural activities with or without conditions and other CAO provisions relevant to agriculture.

Methods:

Researchers obtained county CAOs via the internet or requested hard copies, followed up by verbal confirmation with county staff. The researchers could not determine the implementation or funding mechanisms for the CAOs.

Key Findings:

The review of critical areas ordinances found that counties throughout the state treat agriculture differently in their ordinances with respect to exemptions, conditions, standards and requirements. The fact-finding paper includes an overview of the regulatory and non-regulatory language in the county critical areas ordinances, compliance requirements, and the varying definitions for agriculture.

Additional Information:

A draft detailed matrix has been prepared comparing the language used in CAOs. The draft matrix also presents information on the language used and requirements for wetland and habitat conservation buffer widths.

Appendix B-2: Conservation Reserve Enhancement Program and other Conservation Programs

Title and Authors: "Acreage Enrolled in CREP (Conservation Reserve Enhancement Program) and Additional Conservation Program Descriptions -- Revised draft September 19, 2008
Branden Born, PhD and Alon Bassok, MUP

Scope of Research:

Review of CREP, Conservation Reserve Programs, and other incentive-based conservation programs available to agricultural landowners in Washington State.

Methods:

Information was primarily obtained from Washington State data bases, interviews with the Washington Conservation Commission, and interviews with conservation district personnel.

Key Findings:

1. The Conservation Reserve Enhancement Program is a voluntary program jointly operated by the US Department of Agriculture Farm Service Agency and the Washington Conservation Commission. Landowners who have salmon or steelhead bearing streams on their properties may enter into 10-15 year contracts whereby they receive financial incentives in return for placing a buffer along the stream.
 - a. There are 9,080 areas and 616 stream miles enrolled in the CREP program in Washington.
 - b. A 2006 evaluation of the program indicated that CREP is underutilized for smaller parcels. The reasons cited for the lack of participation were that:
 - Landowners of small parcels have indicated that the minimum buffer size takes too much land from agricultural production in some cases.
 - Rents are considered to be too low to justify taking the land out of production in for some high-value crops.
 - Individual farmers may be wary of governmental programs.The extent to which these issues influence participation depends on a variety of site-specific conditions including parcel size, crop type and value, and local rental rates.
 - c. Conservation districts do not currently use their entire CREP allocations.
 - d. Participation in CREP programs vary. The counties with the highest numbers of stream miles enrolled in CREP are Walla Walla, Columbia, and Whatcom Counties.
2. The Conservation Reserve Program (CRP) is a voluntary program administered by USDA that offers annual payments to landowners who establish grass, shrub and tree cover on environmentally sensitive lands. Eligible landowners sign up for 10 to 15 year contracts with a current state-wide average rental rate of \$67.66 per acre.
 - a. A total of 1,540,954 acres are currently in CRP status.
 - b. Counties with over 50,000 acres enrolled in CRP are located in eastern Washington.

Additional Information: The report includes information about other conservation programs, summarized in the following table. The fact that contracts in the programs are only temporary means that long term results are not guaranteed.

Program	Purpose	Admin. by	Years Reported	Contract Types(s)	Number of Contracts	Payments/Rents	Total Payments	Acres	Buffers	Stream Miles
CREP	Restore salmon bearing streams	USDA FSA and WSCC	1998-2007	10-15 year	~600	Based on soil types	\$1,008,045 annually	9080	35-180 feet	616
CRP	Reduction in soil erosion and stream sedimentation improved water quality and creation of habitat	USDA FSA and NRS for technical support	1998-2007	10-15 year	12,475	2008 state average rental rate is \$67.66, which varies by county	Not available	1,540,954	Not applicable	Not applicable
CIG	Supports innovative approaches or technologies to conservation	NRCS	2006-2007	1 to 3 year programs	5	Up to \$150,000 for the program	\$234,000	Not applicable	Not applicable	Not applicable
CSP	Maintaining and enhancing natural resources	NRCS	2004-2007	5 to 10 year contracts	354	Year by year payments between \$20k and \$45k	\$22,503,205	398,519	Not applicable	Not applicable
EQIP	Habitat protection, range, health, water and air quality concerns.	NRCS	2002-2006	Up front payment, limited to \$450,000	2,433	Eligible operators may receive up to 75% of the installation costs for conservation structures	\$74,148,826	1,183,660	Not applicable	Not applicable
FRPP	Keep productive farm and ranchland in agricultural uses	NRCS	2002-2007	Permanent easements	60 parcels	Up to 50% of the fair market easement value	\$9,595,235	3,132,213	Not applicable	Not applicable
GRP	Protect and restore grasslands and support grazing activities	NRCS	2003-2005	10 to 30 year contracts, 30 year or permanent easements	~23	For the contracts, annual payments of up to 75% of grazing value. Permanent easements paid up-front.	\$2,206,737	3,695	Not applicable	Not applicable
WRP	Restore and enhance wetlands and riparian areas converted to cropland and improve habitat for birds and animals	NRCS	2002-2007	30 year and permanent easements	73	For the 30-year easements, annual payments may not be in excess of \$50,000. Permanent easements receive payments up-front	\$27,901,644	8,683	Not applicable	Not applicable
WHIP	Restore native vegetation and improve habitat for targeted wildlife species	NRCS	2003-2007	Up front payment	195	Based on costs of specific practices, which vary by location.	\$3,067,100	10,034	Not applicable	Not applicable
KEY TO ACRONYMS: CREP=Conservation Reserve Enhancement Program; CRP=Conservation Reserve Program; CIG=Conservation Innovation Grants; CSP=Conservation Security Program; EQIP=Environmental Quality Incentive Program; FRPP=Farm and Ranchland Protection Program; GRP=Grassland Reserve Program; WRP=Wetlands Reserve Program; WHIP=Wildlife Habitat Incentive Program										

Appendix B-3: Conservation Easements

Title and Authors: “Acreage Protected by Conservation Easements” –July 3, 2008 draft
Branden Born, PhD and Alon Bassok, MUP

Scope of Research:

A conservation easement is a voluntary legal agreement that permanently restricts specified activities on a piece of property, in order to protect conservation values such as forest ecosystems, wildlife habitat, biodiversity, water quality, open space and carbon sequestration. The conservation easement is granted by the property owner to a conservation organization or government agency. The Center was directed to obtain information on the extent and nature of conservation easements as a land use tool across the state.

Methods:

Data for this analysis was collected through The Nature Conservancy, which holds the largest and most comprehensive database on easements in the state. Data was also collected from state agencies, other land trusts, and individual counties through personal contact and online queries.

Key Findings:

- a. There are approximately 92,000 acres protected by conservation easements in Washington.
- b. The 92,000 acres represent almost 2,000 separate easements.
- c. Conservation easements exist in (at least) 34 Washington counties; King County has the most acreage, and other counties with significant acreage include Okanogan, San Juan, Skagit, Snohomish, and Whatcom.
- d. Conservation easements are held by 31 different entities, including state agencies, counties, and private non-profit organizations such as The Nature Conservancy, Cascade Land Conservancy, and numerous smaller land trusts.
- e. Conservation easements allow for great design flexibility to meet landowner and parcel-specific needs (e.g. revenue stream, tax benefits, and environmental protection).
- f. Conservation easements often exist to protect commercial agriculture, although only a portion of the 92,000 acres protected by conservation easements protect agricultural lands in critical areas. Many other conservation easements exist to protect critical areas and functions, and have no effect on agriculture.
- g. Conservation easements, because of limited resources and their voluntary nature, can be a difficult tool to use to effect uniform change where total compliance is necessary to achieve policy ends; they can, however, be an important strategic tool or component of a larger plan to protect agricultural areas and critical areas and functions.
- h. Monitoring of conservation easements is performed by easement holders and can present a challenge for some, but not all, organizations. Standardized monitoring approaches are being advanced.

Additional Information:

There are numerous public entities that may become the grantees or holders of easements, including but not limited to state agencies, counties, and private land trusts. Federal agencies with specific financial programs in place include the Farm and Ranchland Protection Program (FRPP), Grassland Reserve Program (GRP) and Wetlands Reserve Program (WRP), all administered through the US Department of Agriculture's Natural Resources Conservation Service (NRCS). The State of Washington's Recreation and Conservation Office administers Farmland Preservation Program grants through the Washington Wildlife and Recreation Program.

APPENDIX B-4: Compliance with Water Quality Requirements

Title and Authors: “Compliance with Water Quality Requirements” – July 31, 2008 (draft under revision)

Branden Born, PhD & Alon Bassok, MUP

Scope of Research:

Assess compliance with statewide water quality requirements related to agriculture. Review causes for pollution related to non-compliance. Investigate the availability of comprehensive data sets of statewide water quality data.

Methods:

Information was primarily obtained from the 2005 list of water bodies compiled by the Washington Department of Ecology for the Environmental Protection Agency, under the requirements of the Federal Clean Water Act. Interviews were also conducted with staff from the following entities related to water quality monitoring: Washington Departments of Ecology and Agriculture, Puget Sound Partnership, and Whatcom, Island and Skagit Counties.

Key Findings:

- a. Data compiled under the requirements of the Clean Water Act may not in some cases be useful in determining the extent of compliance with regulatory requirements, source identification, or cause and effect with particular types of land use. The Clean Water Act 303(d) list of impaired water bodies is established to identify polluted water bodies and address total maximum daily loading (TMDL) of pollutants on a cumulative basis.

Impaired Waters Listed by Type of Waterbody (from 303(d) list)	
Waterbody Type	Number of Waters
Stream/Creek/River	1,444
Bay/Estuary	146
Lake/Reservoir/Pond	121
Not Reported	3

- b. Data is not available for all water bodies, thus a stream that is not listed as impaired may not necessarily be clean—it may simply not have been tested. Where data is available, most areas document some level of pollution.
- c. Part of the difficulty in determining cause and effect for pollution is that the pollutant sources and their effects are often geographically separate.
- d. Monitoring is expensive and occurs at different scales and with different methods on a piecemeal basis. State programs are working to address monitoring comprehensively.

Additional Information:

Additional approaches to water quality monitoring and compliance will be described in the final version of this fact-finding paper.

Appendix B-5: Requirements of Federally Approved Salmon Recovery Plans

Title and Author: “An Overview of Salmon Recovery Plans and Agriculture in Washington State”
– June 30, 2008 draft; Ann Seiter, MS

Scope of Research:

Assess requirements of federally-approved salmon recovery plans related to agriculture and critical areas.

Methods:

Information was obtained by reviewing salmon recovery documents and interviews with salmon recovery managers in each of the recovery planning domains in Washington.

Key Findings:

- a. ESA listings for salmon in Washington are grouped into three geographic domains: 1) Puget Sound; 2) Willamette/Lower Columbia; and 3) Interior Columbia, which has three sub-domains—Middle Columbia, Snake, and Upper Columbia. Individual planning domains prepared plans and sub-chapters with extensive local input from watershed-based organizations.
- b. Final and interim recovery plans have been approved by NOAA Fisheries in several regions, and implementation is occurring in all planning domains (see table).
- c. Recovery plans are required to include: site specific management actions necessary for recovery; objective and measurable criteria for delisting; and time and cost estimates. Plans also include an analysis of the harvest, hatchery, habitat, and hydropower factors affecting the species. Habitat factors related to agricultural activities include instream flows, water quality, loss of riparian vegetation, channel modification, and levees and drainage systems in river deltas and estuaries.
- d. Plans generally include a mix of protection and restoration strategies in individual watersheds and sub-basins including site-specific projects, incentive programs and enforcement and monitoring programs, and in some cases, recommendations for land use regulatory changes. However, these vary widely between and within planning domains. Most recovery plans describe watershed-level recovery strategies rather than specific projects and proposals.
- e. Salmon recovery managers report that incentive programs have been locally successful in protecting habitat and riparian function, however some programs are temporary in nature and participation may be spotty in a particular watershed, limiting the program's effectiveness.
- f. Factors impeding the implementation of recovery plans include the lack of funding, landowner willingness, pressure of land conversion from agriculture to residential use, the temporary nature of incentive programs, and the difficulty in addressing large-scale restoration projects.
- g. Some salmon recovery managers reported that incentive programs could be more effective if linked more closely to priority habitats.

Additional Information:

Habitat conservation plans related to agriculture have been attempted in several areas including the Dungeness and Walla Walla watersheds. To date, the only HCP in the final stages of completion is the Broughton Land Company HCP for native species on their lands in southeast Washington. The Broughton HCP is a proposal for an incidental take permit from agricultural and forestry activities, and contains strategies for timber harvest, stream buffers, cattle management, road removal, and revegetation.

Table 1: Status of regional salmon recovery documents in Washington State.

Domain/Planning Region	Document	Status
Puget Sound: PS Chinook and bull trout	Final recovery plan (Shared Strategy Plan and NOAA supplement)	NOAA adopted 1/19/07
Puget Sound: Hood Canal/ SJF Summer Chum	Final recovery plan (Hood Canal Coordinating Council) and supplement	Adopted 5/24/07
Puget Sound: Lake Ozette Sockeye	Proposed recovery plan for Lake Ozette Sockeye Salmon	Released 4/23/08 for comment.
Willamette/Lower Columbia	Interim Regional Recovery Plan	Approved 2/3/06
Interior Columbia: Middle Columbia	Draft recovery plans and strategies for Middle Columbia Steelhead and subbasin management units.	Yakima draft & supplement 5/32/06 71FR26052
Interior Columbia: Snake River	Draft recovery plan for SE WA & supplement	3/14/06 71FR13094
Interior Columbia: Upper Columbia	Final recovery plan	Adopted 10/9/07
Coastal/Puget Sound Bull trout	Draft recovery plan for Coastal-Puget Sound Distinct Population Segment	Draft 2004 US Fish & Wildlife Service
Bull trout: Eastern WA population segments	Draft recovery plan for Three of the Five Distinct Population Segments of Bull Trout	Draft 2002 US Fish & Wildlife Service

APPENDIX C: Summaries of Case Examples

- C-1 Whatcom County
- C-2 Clark County
- C-3 Nisqually Watershed Council
- C-4 Washington Farm Bureau

APPENDIX C-1: Whatcom County

The conservation district presented an overview of the conditions in Whatcom County relevant to agriculture and critical areas. George Boggs, manager of the Whatcom Conservation District, noted that the landscape has been highly modified by agricultural development for over a century and exhibits degraded conditions. Whatcom County has a major dairy industry, along with crop production (fruit, nuts, berries), and a large number of small “lifestyle” farms with one or two heads of livestock. Local objectives for agriculture and critical areas emphasize restoration as well as protection, and the maintenance of farming in the community.

A collaborative process was used to prepare an update to the critical areas ordinance, with particular involvement from Whatcom County, Whatcom Conservation District, Lummi Nation, Washington State Department of Ecology, federal agencies (such as Natural Resource Conservation Service and the Environmental Protection Agency) and area farmers. These entities had developed working relationships in previous efforts, such as the development of a response and clean-up plan in areas where shellfish beds had failed to meet water quality and shellfish sanitation standards and regulations. The clean-up plans identified management improvements to dairy farms and other actions and an extensive monitoring program. Monitoring showed improvements to fecal coliform contamination following implementation.

The county’s new critical areas ordinance has a 3-tier structure that is tied to the potential for water quality and critical areas problems. Farms at low risk of causing environmental degradation conduct self-assessments and owners/operators implement improvements; those at medium risk are required to complete a farm plan; farms with high risk operations must receive permits and comply with regulations.

Framework	Observations from Whatcom Presentation
Goals/certainty	Community core groups had consensus that they wanted: 1) firm protection for water quality and critical areas, and 2) flexible solutions to protect agriculture. This was the “right thing to do.”
Outcome based solutions	3 general strategies were directed at improving farm practices related to critical areas and water quality: <ul style="list-style-type: none">o Prohibit improper practices (enforce existing regulations)o Require the use of best management practiceso Encourage restoration to a higher level than existing conditions.
Strengthen cooperation	<ul style="list-style-type: none">• Information is a key element in identifying the sources of the problem and developing solutions.• Combination of a technical team to address the science and a citizens’ team to address community and policy input was considered to be positive.
Voluntary measures	<ul style="list-style-type: none">• Incentive measures need to achieve a balance between accountability and landowner privacy.• There are fewer incentive programs available to small landowners.• Not as evident how to reach and influence small landowners.• Their program has voluntary steps that appear useful, but not yet clear that all audiences are implementing

Monitoring and assessment	<ul style="list-style-type: none"> • Metrics for measuring water quality to achieve the shellfish harvestable standards are fairly simple, while those for riparian zones are complicated. • Whatcom was successful at pulling together monitoring from a variety of organizations. These resources are not available in all areas, and are highly dependent on funding. • Where it is difficult to measure outcomes due to the many variables involved (e.g. salmon) you may have to measure for implementation and efficacy in terms of the amount, quality and function of the habitat that is restored.
Regulatory backstop	<p>Actions by agricultural property owners are tied to the possible impact of the farm's operations in tiers:</p> <ul style="list-style-type: none"> o Low risk: Self assessment checklist, more voluntary o Mod risk: Farm plan is required. o High risk: High priority plan and meet applicable regulations. • Landowners are uncomfortable with moveable regulatory standards and want to know exactly what is expected.
Financial/economic resources	<ul style="list-style-type: none"> • Whatcom programs have had grants from state, county, tribes etc. but it has been difficult to cobble together a program that should be ongoing (encouraging and assisting landowner stewardship) with year-to-year grant programs. • Conservation districts play a key role in implementation for these programs, but funding sources are generally not sustained on an ongoing basis. • Funding could be directed more strategically to projects with biggest potential returns in the future. Whatcom has had to be more opportunistic than strategic so far, as programs are based on funding availability.
Additional considerations	<p>Outreach is essential at all levels. Requires resources not arranged for this purpose from existing agency or organizational activities.</p>

APPENDIX C-2: Clark County

Clark County addressed issues related to critical areas and agriculture by convening a multiple-stakeholder group to develop an agricultural module for the county's habitat conservation ordinance. The Clark County group included representatives from agriculture, environmental organizations, the farm bureau, conservation district, and county staff. The group recommended a program that would allow farm landowners to develop their own protection plans, with a set of default requirements for setbacks and buffers for those landowners that did not. The program is monitored by volunteer Agricultural Technicians from the groups that participated in the development of the guidelines. Recommendations were adopted in 2006 as one of the County's five ordinances in its set of critical areas regulations, and implementation is in early stages.

Framework	Observations from Clark County Presentation
Goals/certainty	<ul style="list-style-type: none"> • Recognize the need to protect open spaces (forest and agriculture). • Protect riparian/habitat areas and their functions. • Ag lands must be viable in order to be protected from development or abandonment, thus prescriptive actions should not damage agricultural viability or require high levels of enforcement . • Protect landowner privacy while corroborating protection.
Outcome based solutions	<ul style="list-style-type: none"> • Clark County's solution to the need to protect habitat on agricultural land was a two-pronged approach: <ul style="list-style-type: none"> ◦ Allow landowners to produce their own plans to protect habitat areas or ◦ If they don't, require a default setback from the streambanks. • Emphasizes what to protect and gives the farmers options to figure out how. • Recognizes that protection is often likely to lead to restoration over time, depending on the habitat function you are trying to restore (e.g. sediment input, shade, etc.).
Strengthen cooperation	<ul style="list-style-type: none"> • Clark County used a collaborative process with representatives from WDFW, Audubon, Farm Bureau and others to develop the guidelines. • Plans are tailored to each individual land ownership and conditions. • The farm plan is a collaborative and educational approach with the farmers and creates a bridge between the landowners and the county for the goal of protecting and improving habitat.
Voluntary measures	<ul style="list-style-type: none"> • Property owners have the option of developing a habitat management plan for their property, with assistance from an Ag Tech. • The Ag Techs work with the property owner using a kit developed by the County, but the property owner retains the information to protect privacy. Only a checklist goes into the file. • The landowners review what needs to be protected under the habitat ordinance and choose the BMPs that fit their situation. The landowner must make a conscious decision to implement the BMPs. • Voluntary solutions must be simple to use.

Monitoring and assessment	<ul style="list-style-type: none"> • Ag Techs re-visit a site for 3 years to determine if the management practices are working. • Ag Techs can determine if BMPs are being followed on an individual parcel and whether degradation is occurring, but it is difficult to determine at a larger scale whether the program is effective in preventing substantial degradation. • As noted above under goals, the individual farm plans are not publicly available to protect landowner privacy, but this can make it difficult to evaluate their effectiveness. • Representatives expressed the need to align the monitoring for the County's program with other monitoring efforts for water quality and salmon recovery. Very difficult and potentially expensive, but important not to visit farms over and over for different programs.
Regulatory backstop	<ul style="list-style-type: none"> • The default option is a double setback. There is a no-touch zone immediately adjacent to the riparian zone, and an additional setback that can be used for farming so long as it does not impair the no-touch zone. Distances are based on filtration. • There is also a standard that prohibits substantial degradation. (Difficult to define.) Agriculture has a smaller set of setback standards than development does in order to protect agricultural viability. • If you have a habitat zone on your property, you must comply with the habitat ordinance (farm plan or default) regardless of whether the property is zoned rural or agricultural. And regardless of whether the farming is commercial or recreational. • Farms also have to meet other federal and state standards for water quality.
Financial/economic resources	<ul style="list-style-type: none"> • Conservation districts play a key role in implementation for these programs, but funding sources are generally not sustained on an ongoing basis. • Clark County is relying heavily on volunteer support.
Additional considerations	<ul style="list-style-type: none"> • Education for landowners is critical to implementation • Clark County had a "marketing" plan for the program, but it is in the very early stages of implementation.

APPENDIX C-3: Nisqually Watershed Council

Nisqually Tribal Natural Resources Director David Troutt and farm owner Rick Wilcox presented the history of the Nisqually Task Force, which originated in 1985. They stated that early meetings were contentious, but that the longevity and cooperation of the group has enabled them to attain protected status for the majority of the Nisqually River riparian corridor, along with education programs and other projects. Troutt and Wilcox identified several elements which they considered to be important to success, including the formation of an ongoing council with broad watershed goals (rather than single-issue committees), good leadership that created an atmosphere of trust and cooperation, the availability of staff resources, and a lot of hard work to implement actions. Continuity was also a positive factor as, over time, many landowners decided that participation was in their best interest. The 5248 committee members noted during the discussion that the unique circumstances of individual watersheds may affect the ability to replicate the Nisqually Council model in other communities.



Photo courtesy D. Troutt, Nisqually Indian Tribe

Framework	Observations from Nisqually Presentation
Goals/certainty	Group considers the greatest success over a 20 year period to be the sense of place in the Nisqually watershed and the development of trust among parties. Goals include biological diversity, recreation, scenic vistas, and sustainable economy.
Outcome based solutions	General strategies: <ul style="list-style-type: none"> • Formation of a land trust for property acquisition • Education programs and curricula • Collaborative development of Chinook recovery plan and watershed management plan
Strengthen cooperation	<ul style="list-style-type: none"> • Combination of an intergovernmental executive committee and a citizens' advisory committee • Joint committees to work on specific issues
Voluntary measures	<ul style="list-style-type: none"> • Long term collaboration considered essential in getting landowner cooperation.
Monitoring and assessment	<ul style="list-style-type: none"> • Occurs in the context of governmental and agency activities, with reporting to the council.
Regulatory backstop	<ul style="list-style-type: none"> • Not a regulatory entity, but member governments have individual jurisdictions over specific activities.

Financial/ economic resources	<ul style="list-style-type: none"> • One element of success has been ongoing funding for staff for two decades. Now developing a non-profit entity. • Successful in obtaining funding for numerous programs and projects, particularly land acquisition and restoration. • Salmon-safe certification program considered beneficial by landowner participants.
Additional considerations	<ul style="list-style-type: none"> • They consider ongoing staff and educational programs to be essential.

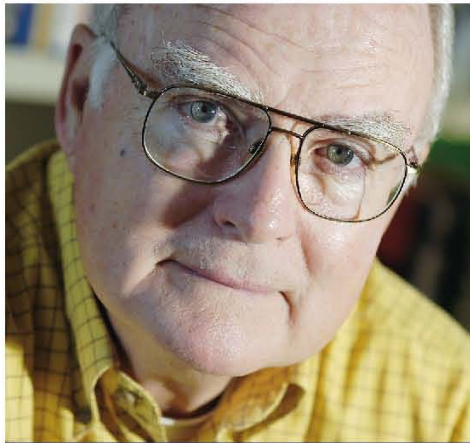
APPENDIX C-4: Washington Farm Bureau's Worker Safety Insurance Program

To examine the workings of one type of voluntary program that interacted with a regulatory framework, the committee invited Farm Bureau representatives to describe the structure of the worker safety program. In 1982, the Department of Labor and Industries developed the "Retrospective State Industrial Insurance Plan," a vehicle for public-private partnerships wherein small employers and their associations could join an industrial insurance rate pool with other employers in a similar industry, giving smaller employers the same access to higher discount rates on industrial insurance premiums as their larger counterparts. Using the retro program, participating businesses within that category could benefit by joining a larger collective pool, which could receive a refund if the entire pool had fewer than the projected claims in a given year. Likewise, if claims exceeded the expected amount, an assessment would be made to the organization's rate pool over and above the industrial insurance premiums already paid. The Washington Farm Bureau provides risk assessment consultations and educational safety seminars for their members, and conducts voluntary inspections of their members participating in the Retro program. Although the example did not relate directly to critical areas ordinances, the program was presented as an example of a "bridge" program where trained inspectors serve as intermediaries between regulatory agencies and individual landowners.

Framework	Observations from Farm Bureau Presentation
Goals/certainty	Program goals are to promote worker safety, higher worker morale, and lower insurance premiums.
Outcome based solutions	General strategies: The Farm Bureau employs trained safety inspectors that serve as intermediaries between the farms and the Department of Labor and Industries. Participating farms are required to comply with the same safety regulations as non-participants, but they receive inspections from the Farm Bureau rather than Labor and Industries.
Strengthen cooperation	Farm Bureau personnel work directly with landowners on corrective actions and safety programs in the field.
Voluntary measures	Landowner participation is voluntary.
Monitoring and assessment	A third party (in this case the Farm Bureau) provides a bridge between the regulator (L&I) and the regulated (landowner) prior to formal inspection and possible citation.
Regulatory backstop	Periodic inspections by L&I are still required, but may be deferred through certification programs.
Financial/economic resources	Program is supported by a fee for participating. The financial incentives (lower premiums, rebates) increase participation. The number of trained inspectors is small and could limit program success in a wider application.

THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON



"Unfortunately, we have historically lacked an institutional theater in which science and policy-making can come together efficiently, and produce more light than heat."

– WILLIAM D. RUCKELSHAUS

For more information on the William D. Ruckelshaus Center, please visit our web site at:
<http://RuckelshausCenter.wsu.edu>

about the center

mission

The mission of the William D. Ruckelshaus Center is to act as a neutral resource for collaborative problem solving in the region. Its aim is to provide expertise that improves the availability and quality of voluntary collaborative approaches to policy development and multi-party dispute resolution. The Center is a joint effort of Washington State University (WSU) and the University of Washington (UW) and was developed in response to requests from community leaders. Building on the unique strengths of the two institutions, the Center is dedicated to assisting public, tribal, business, agribusiness, environmental, and other community leaders in their efforts to work together to build consensus and resolve conflicts around difficult public policy issues. In addition, the Center helps advance the teaching, curriculum, and research missions of the two universities by bringing real-world policy issues to the campuses.

activities

The Center will not duplicate or compete with existing services. When it is invited to assist with a dispute or an emerging issue, it can:

- Provide a neutral and safe forum for parties to define and resolve issues
- Conduct a conflict assessment to determine the most productive means of addressing the issues
- Marshal resources for collaborative problem solving
- Serve as a clearinghouse for resources and research to be used at the option of the parties
- Perform applied research
- Provide knowledge, training, and infrastructure development to improve the collaborative problem-solving capacity of the parties and institutions
- Host policy discussions

"Good environmental policy is crafted by involved citizens working in partnership with government. It requires a delicate balancing of viewpoints and a creative and civil search for solutions. The courtroom is no substitute for intelligent cooperation."

—DANIEL J. EVANS



projects

The Center offers assistance, training, and research to advance some of the most challenging issues in the state, including natural resources policy, socio-economic issues, and regulatory reform. The Center provides expertise in the process of define the issues, enhancing the ability of stakeholders to address the substance of the issues and come to agreement.

Prior to conducting a project, the Center follows a deliberate approach of first seeking confidence of the affected and interested parties through consultation with key stakeholders. The Center's role is to improve understanding among parties and enhance the possibilities for progress on issues, rather than dictate an answer from the university. The results belong to the parties themselves; the Center provides an independent forum and neutral resources that create the possibility for these results to take shape.

governance and funding

The Center has offices at WSU and UW. It is overseen by an advisory board chaired by William Ruckelshaus and composed of prominent local and state leaders representing a broad range of constituencies and geographic locations in the region. Funding for the Center is sought from a mix of sources, including foundations, corporations, individuals, agencies, other state and federal sources, and fees for services when appropriate.

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APPENDIX E: Text of SSB 5248

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5248

60th Legislature
2007 Regular Session

Passed by the Senate April 17, 2007
YEAS 45 NAYS 2

President of the Senate

Passed by the House April 13, 2007
YEAS 82 NAYS 15

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5248** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5248

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Agriculture & Rural Economic Development
(originally sponsored by Senators Hatfield, Schoesler, Rasmussen,
Morton, Honeyford, Haugen, Shin and Holmquist)

READ FIRST TIME 02/07/07.

1 AN ACT Relating to preserving the viability of agricultural lands;
2 adding a new section to chapter 36.70A RCW; creating new sections;
3 providing an expiration date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the goal of
6 preserving Washington's agricultural lands is shared by citizens
7 throughout the state. The legislature recognizes that efforts to
8 achieve a balance between the productive use of these resource lands
9 and associated regulatory requirements have proven difficult, but that
10 good faith efforts to seek solutions have yielded successes. The
11 legislature believes that this willingness to find and pursue common
12 ground will enable Washingtonians to enjoy the benefits of a successful
13 agricultural economy and a healthy environment, while also preventing
14 the unnecessary conversion of valuable agricultural lands.

15 (2) The legislature, therefore, intends this act, the temporary
16 delays it establishes for amending or adopting provisions of certain
17 critical area ordinances, and the duties and requirements it prescribes
18 for the William D. Ruckelshaus Center, to be expressions of progress in

1 resolving, harmonizing, and advancing commonly held environmental
2 protection and agricultural viability goals.

3 (3) The legislature fully expects the duties and requirements it is
4 prescribing for the Ruckelshaus Center to be successful. If, however,
5 the efforts of the center do not result in agreement on how to best
6 address the conflicts between agricultural activities and certain
7 regulatory requirements as they apply to agricultural activities, the
8 legislature intends, upon the expiration of the delay, to require
9 jurisdictions that have delayed amending or adopting certain regulatory
10 measures to promptly complete all regulatory amendments or adoptions
11 necessary to comply with the growth management act.

12 (4) The legislature does not intend this act to reduce or otherwise
13 diminish existing critical area ordinances that apply to agricultural
14 activities during the deferral period established in section 2 of this
15 act.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW
17 to read as follows:

18 (1) For the period beginning May 1, 2007, and concluding July 1,
19 2010, counties and cities may not amend or adopt critical area
20 ordinances under RCW 36.70A.060(2) as they specifically apply to
21 agricultural activities. Nothing in this section:

22 (a) Nullifies critical area ordinances adopted by a county or city
23 prior to May 1, 2007, to comply with RCW 36.70A.060(2);

24 (b) Limits or otherwise modifies the obligations of a county or
25 city to comply with the requirements of this chapter pertaining to
26 critical areas not associated with agricultural activities; or

27 (c) Limits the ability of a county or city to adopt or employ
28 voluntary measures or programs to protect or enhance critical areas
29 associated with agricultural activities.

30 (2) Counties and cities subject to deferral requirements under
31 subsection (1) of this section:

32 (a) Should implement voluntary programs to enhance public resources
33 and the viability of agriculture. Voluntary programs implemented under
34 this subsection (2)(a) must include measures to evaluate the successes
35 of these programs; and

36 (b) Must review and, if necessary, revise critical area ordinances

1 as they specifically apply to agricultural activities to comply with
2 the requirements of this chapter by December 1, 2011.

3 (3) For purposes of this section and section 3 of this act,
4 "agricultural activities" means agricultural uses and practices
5 currently existing or legally allowed on rural land or agricultural
6 land designated under RCW 36.70A.170 including, but not limited to:
7 Producing, breeding, or increasing agricultural products; rotating and
8 changing agricultural crops; allowing land used for agricultural
9 activities to lie fallow in which it is plowed and tilled but left
10 unseeded; allowing land used for agricultural activities to lie dormant
11 as a result of adverse agricultural market conditions; allowing land
12 used for agricultural activities to lie dormant because the land is
13 enrolled in a local, state, or federal conservation program, or the
14 land is subject to a conservation easement; conducting agricultural
15 operations; maintaining, repairing, and replacing agricultural
16 equipment; maintaining, repairing, and replacing agricultural
17 facilities, when the replacement facility is no closer to a critical
18 area than the original facility; and maintaining agricultural lands
19 under production or cultivation.

20 NEW SECTION. **Sec. 3.** (1) Subject to the availability of amounts
21 appropriated for this specific purpose, the William D. Ruckelshaus
22 Center must conduct an examination of the conflicts between
23 agricultural activities and critical area ordinances adopted under
24 chapter 36.70A RCW. The examination required by this section must
25 commence by July 1, 2007.

26 (2) In fulfilling the requirements of this section, the center
27 must: (a) Work and consult with willing participants including, but
28 not limited to, agricultural, environmental, tribal, and local
29 government interests; and (b) involve and apprise legislators and
30 legislative staff of its efforts.

31 (3) The examination conducted by the center must be completed in
32 two distinct phases in accordance with the following:

33 (a) In the first phase, the center must conduct fact-finding and
34 stakeholder discussions with stakeholders identified in subsection (2)
35 of this section. These discussions must identify stakeholder concerns,
36 desired outcomes, opportunities, and barriers. The fact-finding must
37 identify existing regulatory, management, and scientific information

1 related to agricultural activities and critical areas including, but
2 not limited to: (i) Critical area ordinances adopted under chapter
3 36.70A RCW; (ii) acreage enrolled in the conservation reserve
4 enhancement program; (iii) acreage protected by conservation easements;
5 (iv) buffer widths; (v) requirements of federally approved salmon
6 recovery plans; (vi) the impacts of agricultural activities on Puget
7 Sound recovery efforts; and (vii) compliance with water quality
8 requirements. The center must issue two reports of its fact-finding
9 efforts and stakeholder discussions to the governor and the appropriate
10 committees of the house of representatives and the senate by December
11 1, 2007, and December 1, 2008; and

12 (b) (i) In the second phase, the center must facilitate discussions
13 between the stakeholders identified in subsection (2) of this section
14 to identify policy and financial options or opportunities to address
15 the issues and desired outcomes identified by stakeholders in the first
16 phase of the center's examination efforts.

17 (ii) In particular, the stakeholders must examine innovative
18 solutions including, but not limited to, outcome-based approaches that
19 incorporate, to the maximum extent practicable, voluntary programs or
20 approaches. Additionally, stakeholders must examine ways to modify
21 statutory provisions to ensure that regulatory constraints on
22 agricultural activities are used as a last resort if desired outcomes
23 are not achieved through voluntary programs or approaches.

24 (iii) The center must work to achieve agreement among participating
25 stakeholders and to develop a coalition that can be used to support
26 agreed upon changes or new approaches to protecting critical areas
27 during the 2010 legislative session.

28 (4) The center must issue a final report of findings and
29 legislative recommendations to the governor and the appropriate
30 committees of the house of representatives and the senate by September
31 1, 2009.

32 NEW SECTION. **Sec. 4.** If specific funding for the purposes of
33 section 3 of this act, referencing this act and section 3 of this act
34 by bill or chapter number and section number, is not provided by June
35 30, 2007, in the omnibus appropriations act, this act is null and void.

1 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

5 NEW SECTION. **Sec. 6.** This act expires December 1, 2011.

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APPENDIX F: Duties of the William D. Ruckelshaus Center for SSB 5248

SSB 5248 set out several duties for the Ruckelshaus Center in conducting the stakeholder process as follows:

- Work with willing participants... and involve and apprise legislators and legislative staff.
- Conduct fact-finding and discussions with identified stakeholders...
- Identify stakeholder concerns, desired outcomes, opportunities and barriers...
- Identify existing regulatory, management, and scientific information related to critical areas...
- Issue two interim reports... to the governor and appropriate committees of the house and senate by December 1, 2007 and December 1, 2008.
- Facilitate discussions to identify policy and financial options or opportunities to address issues and desired outcomes identified in first phase.
- Examine innovative solutions, including, but not limited to, outcome-based approaches that incorporate to the maximum extent practicable, voluntary programs or approaches.
- Examine ways to modify existing statutory provisions to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches.
- Work to achieve agreement among participating stakeholders and to develop a coalition that can be used to support agreed upon changes or new approaches to protecting critical areas during the 2010 session.
- Issue a final report of findings and legislative recommendations to the governor and appropriate committees of the house and senate by September 1, 2009.