

Voluntary Stewardship Program

An Alternative Approach to GMA and CAOs

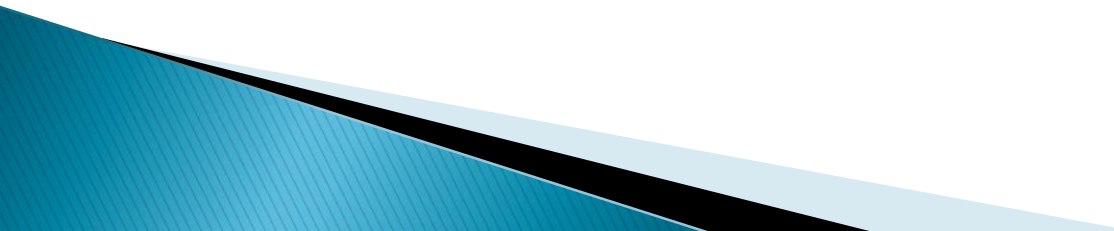
BOCC Presentation - February 1, 2016
Republic, Washington

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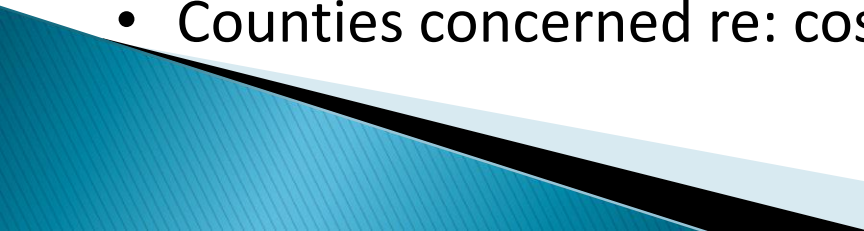


**Washington State
Conservation
Commission**

Agenda

- ▶ Why was the Voluntary Stewardship Program (VSP) developed?
 - ▶ What is the relationship to GMA?
 - ▶ County requirements for opting-in and accepting funds.
 - ▶ Developing your Work Plan.
 - ▶ Individual landowner actions.
 - ▶ What can be learned from the two pilot projects?
 - ▶ Monitoring, evaluation, and consequences.
 - ▶ Questions and next steps.
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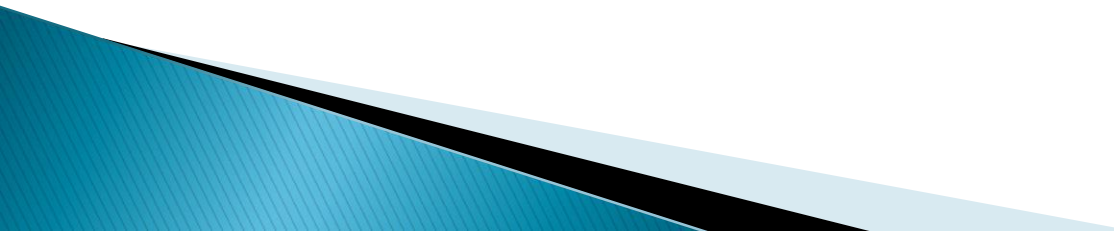
VSP Overview

- All counties must adopt a Critical Areas Ordinance (CAO) protecting critical areas.
 - Ongoing and existing agriculture is exempt from the Shoreline Management Act (SMA).
 - Several counties exempted agriculture from CAO.
 - Trend in early 2000's agriculture not exempt from CAO requirements.
 - Concerns in agriculture community about regulation impacting agriculture value.
 - Environmental concerns of agriculture impact to critical areas – both ongoing and future agriculture.
 - Counties concerned re: costs of appeals.
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VSP Overview

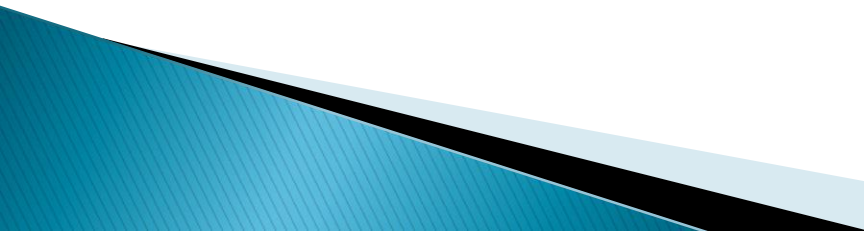
- 2006 – Initiative 933 addressing taking of agricultural lands due to regulations. Fails by 60%.
- 2007 – State Supreme Court Case *Swinomish v. Skagit Co.* – Agriculture not exempt from critical areas requirements of GMA. Counties must regulate agriculture in CAO.
- 2007 - Legislature charged the Ruckelshaus Center to examine the conflict between protecting agricultural land and protecting critical areas in local ordinances adopted under the GMA.
- 2010 – Agreement is reached and legislation introduced in 2011 – ESHB 1886 – but no funding until 2015.
- Under the VSP statute, counties are not obligated to implement VSP until funding is provided.

VSP Overview

- The VSP is created at the Conservation Commission.
 - The Program is an alternative approach for counties to meet GMA requirement protect critical areas on agricultural lands.
 - Clallam decision – because county CAO mentioned in VSP statute does not mean legislature endorsed county CAO.
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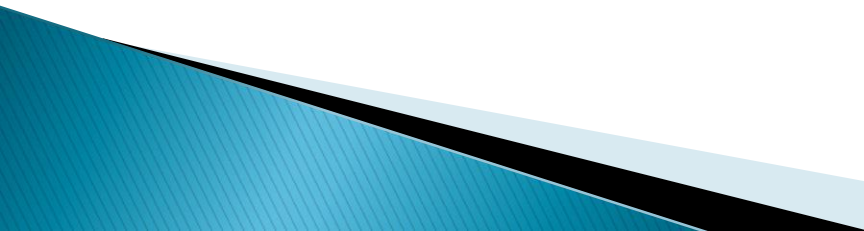
VSP Overview

Purposes of VSP include:

- **Promote plans to protect and enhance critical areas** within the area where agricultural activities are conducted, **while maintaining and improving the long-term viability of agriculture** in the state of Washington and reducing the conversion of farmland to other uses;
 - **Focus and maximize voluntary incentive programs** to encourage good riparian and ecosystem stewardship as an alternative to historic approaches used to protect critical areas;
 - Rely upon RCW 36.70A.060 for the protection of critical areas for those counties that do not choose to participate in this program;
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VSP Overview

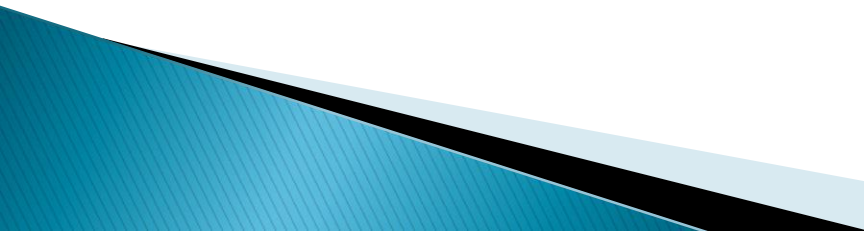
Purposes of VSP include:

- **Leverage existing resources** by relying upon existing work and plans in counties and local watersheds, as well as existing state and federal programs to the maximum extent practicable to achieve program goals;
 - Encourage and foster a spirit of **cooperation and partnership** among county, tribal, environmental, and agricultural interests to better assure the program success;
 - Improve **compliance with other laws** designed to protect water quality and fish habitat.
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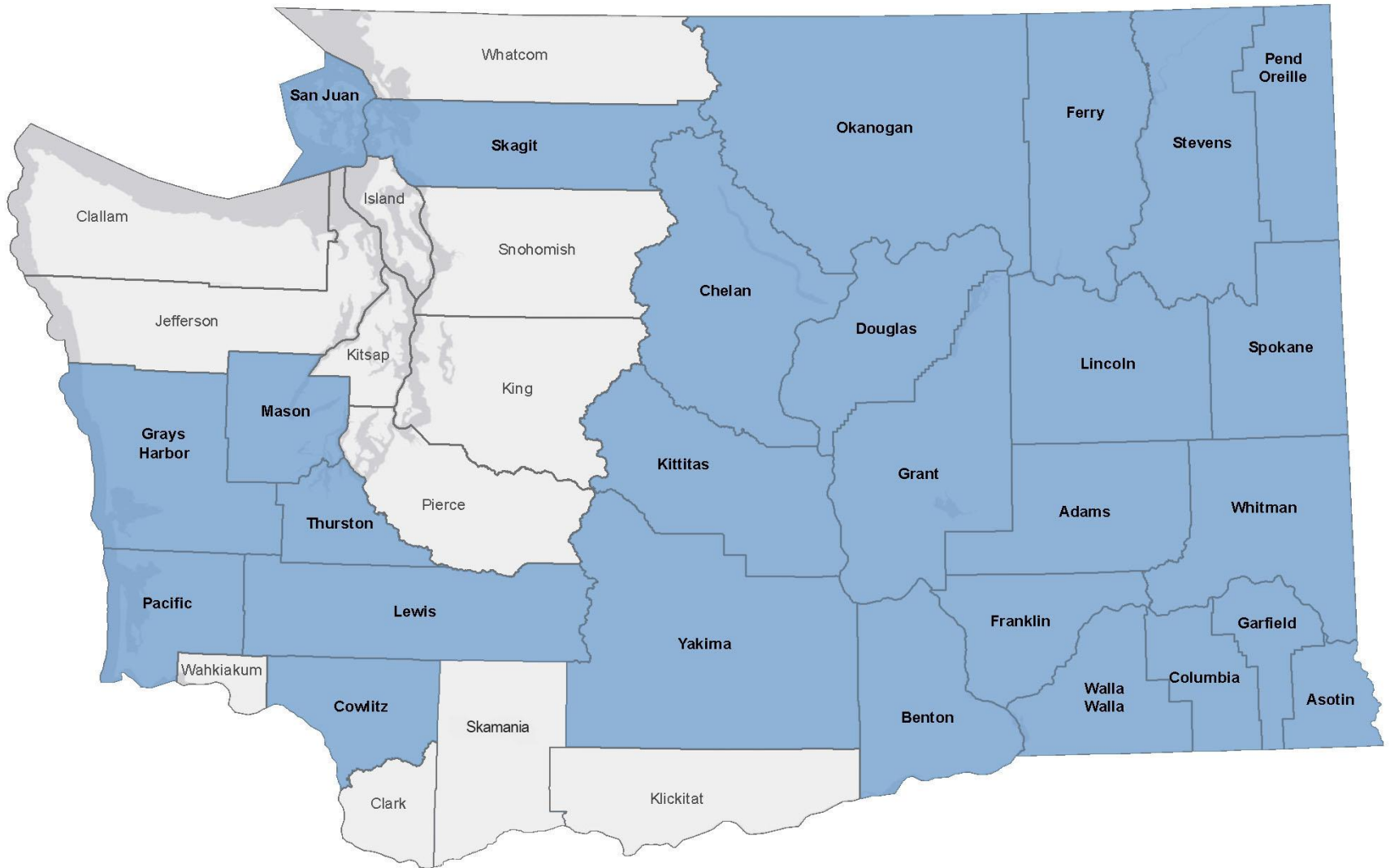
Relationship to GMA

- Legislation creating VSP added new sections to GMA statute, codified at 36.70A.700-760.
- VSP is an alternative approach to protecting critical areas in areas used for agricultural activities. 36.70A.710.
- *Clallam – “the legislature chose to distinguish alternative pathways to GMA compliance for counties that have elected to participate in the VSP and counties that have not.”*
- VSP focus on agricultural activities rather than ag land designations. Activities defined in SMA.

VSP Overview

- Counties are given two options:
 - Opt-in to the VSP, or
 - Continue under existing law in GMA to protect critical areas on agricultural lands.
 - Counties had 6 months from the effective date to select if they wanted to opt-in to the program.
 - By the opt-in date of January 21, 2012 – 28 of 39 counties opted-in, 27 remain in (one has since dropped out).
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COUNTIES OPTING-IN TO THE VOLUNTARY STEWARDSHIP PROGRAM



As of January 2016

Opting-in

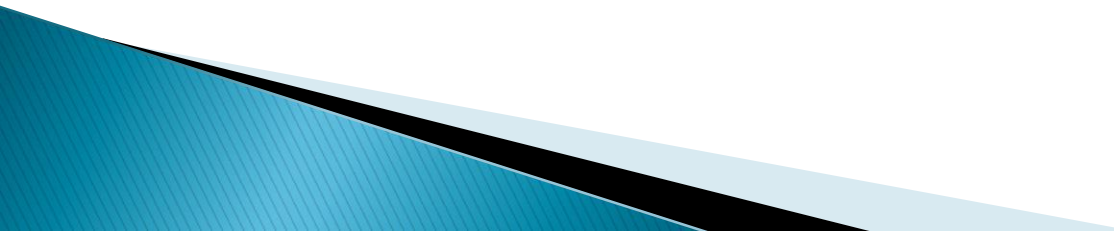
- Counties were required to adopt an ordinance or resolution opting-in to the program.
- Before adopting the resolution, the county must:
 - Confer with tribes, environmental and agricultural interests; and
 - Provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations.
- The ordinance or resolution must:
 - Elect to have the county participate in the program;
 - Identify the watersheds that will participate in the program; and
 - Nominate watersheds for consideration by the Commission as state priority watersheds.

Initial County Responsibilities

Within 60 days of funds being available to a county to implement the program, the county must:

- Designate an entity to administer funds.
 - County may designate itself, a tribe, or another entity to coordinate the watershed group.
- Designate a watershed group.
 - Must confer with tribes and stakeholders before designating the watershed group.
- Must acknowledge receipt of funds.
 - Signing contract with the SCC – triggers timeline for completion of a work plan

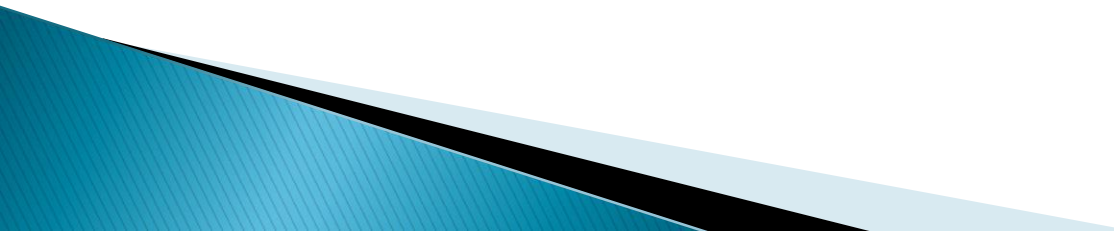
What are the options for staffing your VSP effort?

- ▶ In-house approach -
 - Use present staff.
 - ▶ Consultant approach -
 - Hire consultants to facilitate meetings and prepare plan.
 - ▶ Ask another local agency to staff -
 - Conservation Districts.
 - Other local entity.
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Contracting with the WSCC

- ▶ “*Acknowledge receipt of funds*” is accomplished through signing the contract with the WSCC.
- ▶ County signs the contract.
- ▶ Can the WSCC contract directly with another entity?
 - Statute only allows for county to acknowledge receipt.
 - Another entity can lead and invoice to WSCC.
- ▶ Funding is by invoice for work completed.
- ▶ Full funding is still available.

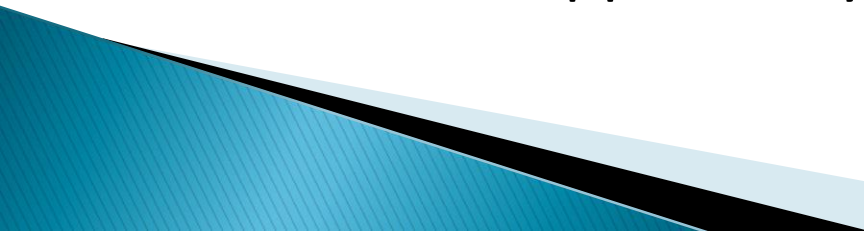
Designation of Watershed Work Group

- Must be designated when funds are made available.
 - The Watershed Group must include a broad representation of key watershed stakeholders and, at a minimum, representatives of agricultural and environmental groups, and tribes that agree to participate.
 - County should encourage existing lead entities, watershed planning units, or other integrating organizations to serve as the watershed group.
 - State and federal agencies can be very useful work group participants.
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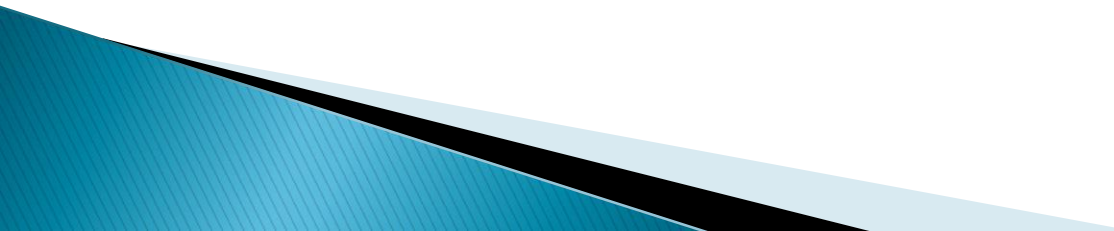
Designation of Watershed Group

- The Watershed Group must develop a work plan to protect critical areas while maintaining the viability of agriculture in the watershed.
- County must:
 - *“...confer with tribes and interested stakeholders before designating or establishing a watershed group.”*
 - *“The watershed group must include broad representation of key watershed stakeholders and, at a minimum, representatives of agricultural and environmental groups and tribes that agree to participate. The county should encourage existing lead entities, watershed planning units, or other integrating organizations to serve as the watershed group.”*

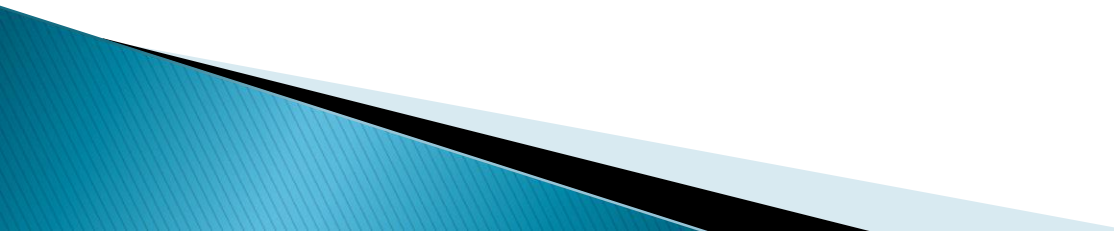
Role of state agency staff in VSP development

- ▶ Counties and/or lead VSP entities are encouraged invite state agency reps to participate on the work group.
 - ▶ State agency staff should be able to provide information to help develop the work plan.
 - ▶ The work plan must be reviewed by a state Technical Panel consisting of four state agencies.
 - ▶ Early engagement of agencies at the work group level will improve the work product and chances for quick review and approval by the Technical Panel.
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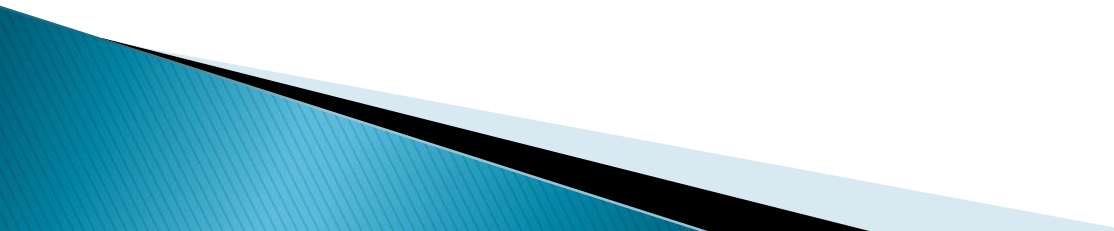
Developing your work plan

- Watershed work groups have 2 years 9 months of receipt of funds to prepare and submit a work plan.
 - If no work plan is submitted by deadline:
 - SCC to engage stakeholder group in discussion with watershed group.
 - Must have work plan in 3 years or “fail out” of VSP.
 - Statute defines what happens if a county “fails out.”
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How to start

- ▶ Collect and evaluate background information.
 - E.g. Chelan County white paper.
 - ▶ Hold local informational meetings.
 - Need to reach out to local stakeholders and let them know about the VSP effort, how to be involved.
 - ▶ Conduct specific outreach using methods already used in your community.
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What topics must the work group address?

- The work plan must:
 - Identify critical areas and ag activities.
 - Identify economic viability of agriculture in county.
 - Identify outreach plan to contact landowners.
 - Identify entity to provide landowner assistance.
 - Identify measurable programmatic and implementation goals and benchmarks.
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Work Plan Elements

In developing and implementing the work plan, the watershed group must:

- a) **Review and incorporate** applicable water quality, watershed management, farmland protection, and species recovery **data and plans**;
- b) **Seek input** from tribes, agencies, and stakeholders;
- c) **Develop goals** for participation by agricultural operators necessary to meet the protection and enhancement benchmarks of the work plan;
- d) Ensure **outreach and technical assistance** is provided to agricultural operators in the watershed;
- e) Create **measurable benchmarks** that, within 10 years after receipt of funding, are designed to result in the protection and enhancement of critical areas functions and values through voluntary, incentive-based measures;
- f) Designate the **entity** that will provide technical assistance;

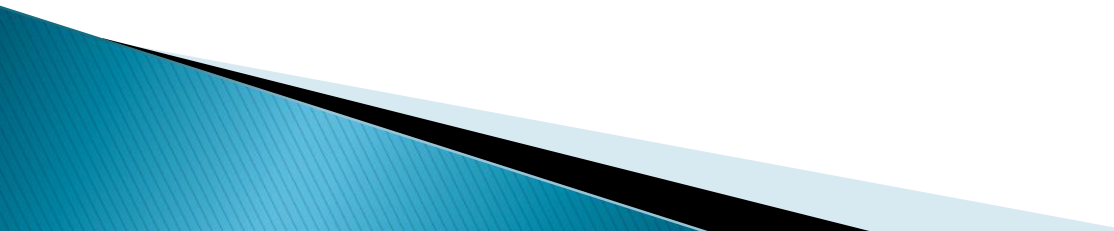
Work Plan Elements

- g) Work with the entity providing technical assistance to ensure **individual stewardship plans contribute** to the goals and benchmarks of the work plan;
- h) **Incorporate** into the work plan existing development regulations relied upon to achieve the goals and benchmarks for protection;
- i) **Establish baseline monitoring** for: (i) participation and implementation of the voluntary stewardship plans and projects; (ii) stewardship activities; and (iii) the effects on critical areas and agriculture relevant to the protection and enhancement benchmarks developed for the watershed;
- j) **Conduct periodic evaluations**, institute adaptive management, and provide a written report of the status of plans and accomplishments to the county and the Commission within 60 days after the end of each biennium;
- k) **Assist state agencies** in their monitoring programs; and
- l) Satisfy any **other** reporting requirements of the program.

SEPA Process on VSP Work Plan

- ▶ Approval of Work Plan is an “action” as defined in the SEPA Rules.
- ▶ It is possible that, since the action of approving is at the Conservation Commission, the CC will be the lead agency for SEPA.
 - More research needs to be done on this question.

Work Plan Approval

- Once a county has completed a work plan, it is submitted to Commission Executive Director for approval.
 - Director submits the plan to a Technical Panel who has 45 days to review and make recommendation to the director.
 - If no, director to work with the local work group and Statewide Advisory Panel for revisions.
 - Once final approval, must implement.
 - Every 5 years, local work group must report on progress to the Conservation Commission.
 - If not making progress, must correct or be kick back into “traditional GMA approach.”
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Technical Panel

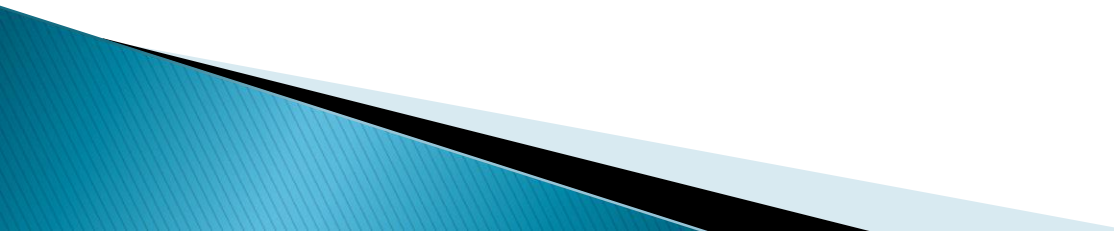
"Technical panel" means the directors or director designees of the following agencies:

WDFW
Ecology

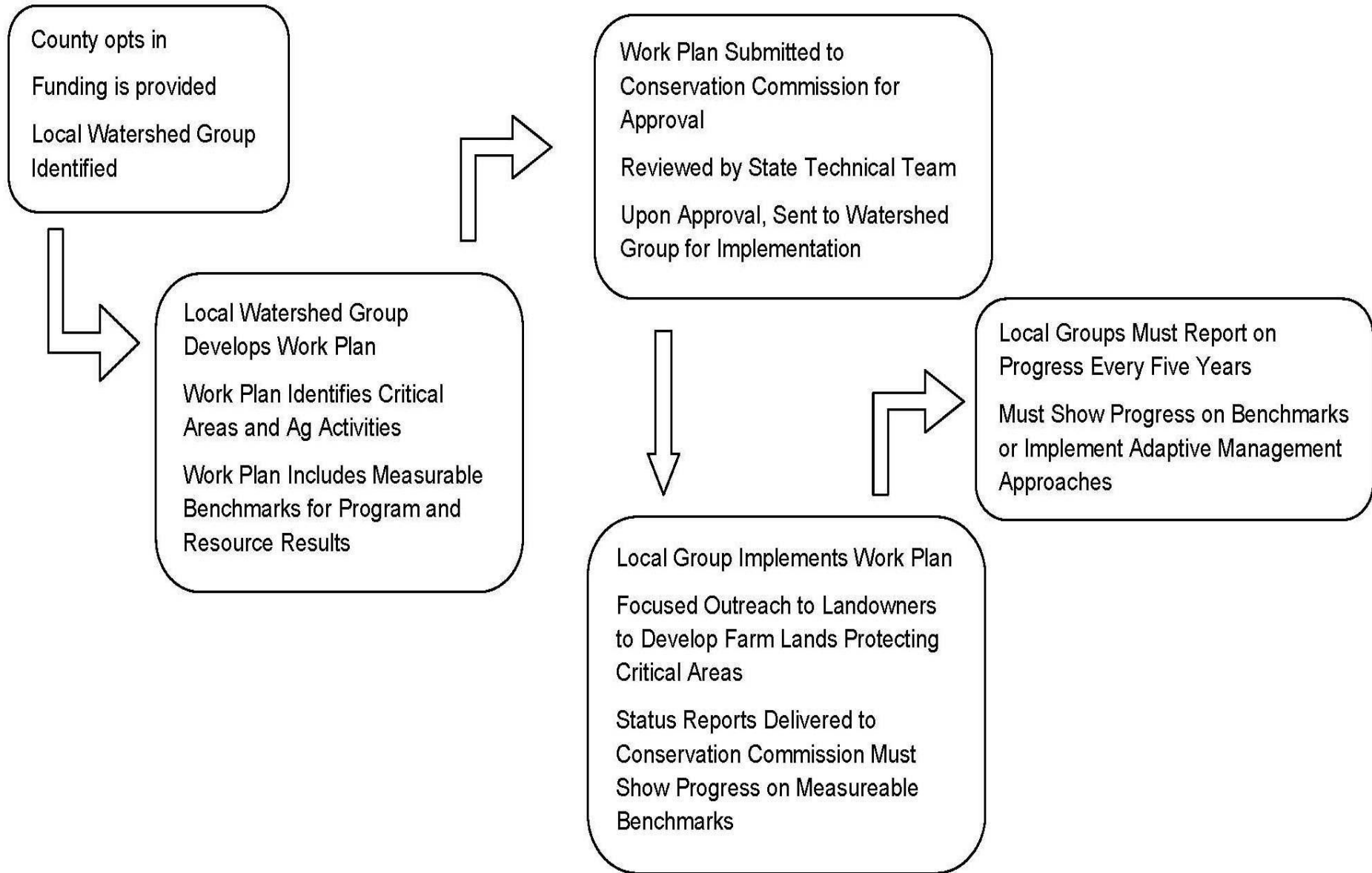
WSDA
WSCC

- The Technical Panel is to review the work plan and assess whether the plan, in conjunction with other plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.
- If the Technical Panel determines the plan will accomplish its goals, the SCC director must approve the plan.
- If the Technical Panel determines the plan will not accomplish its goals, the SCC director must advise the watershed group the reasons for the disapproval.

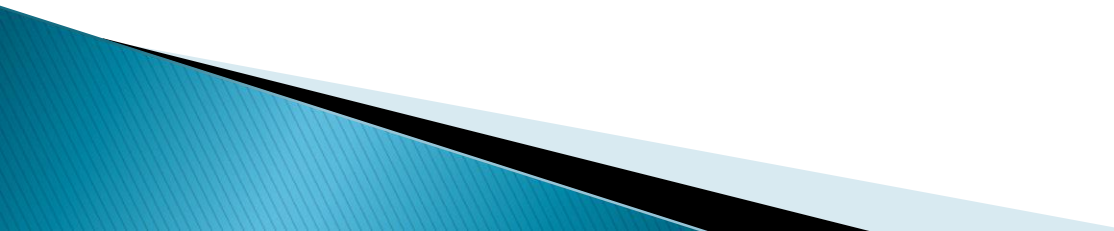
Statewide Advisory Committee

- ▶ Director required to appoint and, in certain circumstances, consult with a Statewide Advisory Committee.
 - ▶ Consisting of two persons representing:
 - county government.
 - agricultural organizations.
 - environmental organizations.
 - ▶ The Commission, in conjunction with the Governor's Office, shall also invite participation by two representatives of tribal governments.
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Voluntary Stewardship Program Process



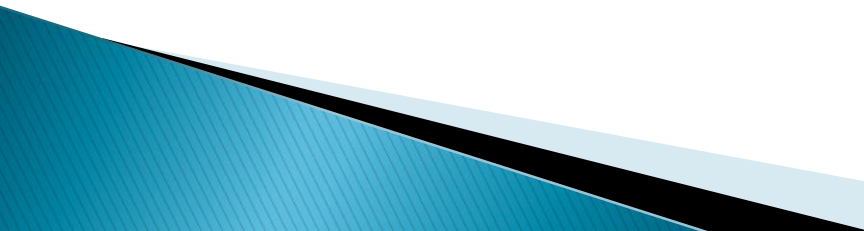
How does VSP fit with existing regulatory programs?

- Engagement in VSP is voluntary – for the county to opt-in, and for the landowner to participate.
 - For an opt-in county, protection of critical areas from ag activities must be done through voluntary stewardship plans.
 - Landowner not doing a stewardship plan is not subject to other local critical area regulations.
 - But – other laws and regulations do still apply. State water quality laws, local clearing and grading ordinances, etc.
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Work Plan Implementation

- “Traditional GMA” uses a regulatory approach – required buffers on each parcel with critical areas.
 - VSP uses a voluntary approach – landowners use stewardship plans and voluntary programs.
 - Voluntary programs have provisions for standards and practices for best management practices.
 - Agricultural operators implementing an individual stewardship plan consistent with a work plan are presumed to be working toward the protection and enhancement of critical areas. RCW 36.70A.750(1).
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Work Plan Implementation

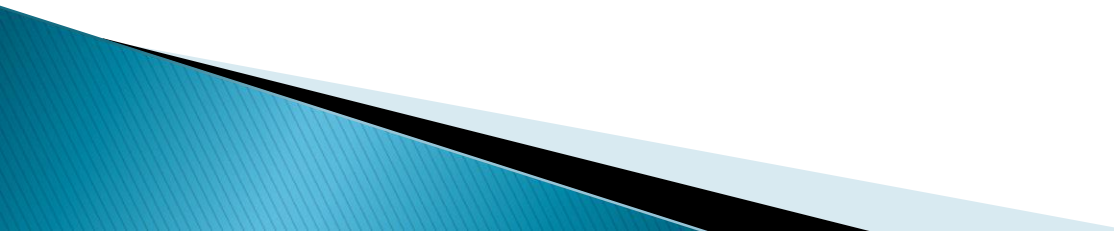
- If the watershed group determines that additional or different practices are needed to achieve the work plan's goals and benchmarks, the agricultural operator may not be required to implement those practices but may choose to implement the revised practices on a voluntary basis and is eligible for funding to revise the practices. RCW 36.70A.750(2).
 - An agricultural operator participating in the program may withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract. RCW 36.70A.760.
 - The watershed group must account for any loss of protection resulting from withdrawals when establishing goals and benchmarks for protection and a work plan. RCW 36.70A.760.
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Work Plan Implementation

Various incentive programs are available to be identified in the landowner stewardship plan (examples below):

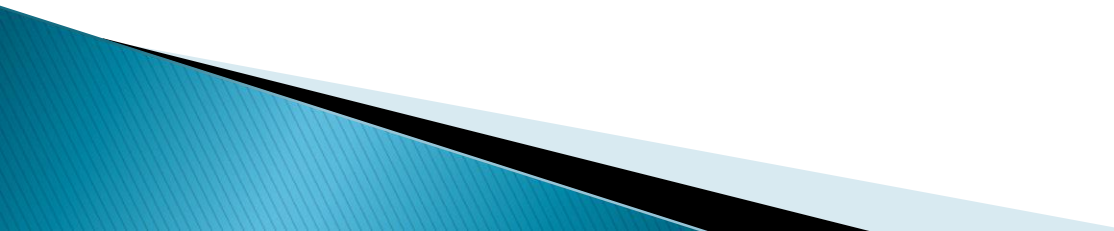
- CREP – Conservation Reserve Enhancement Program.
- EQIP – Environmental Quality Incentive Program.
- CSP – Conservation Stewardship Program.
- ACEP – Agricultural Conservation Easement Program.
- Conservation District Programs – Funded through SCC funding and other fund sources such as ECY water quality grants and local assessment funds.

Progress on Work Plan Implementation

- Not later than five years after the receipt of funding the watershed group must report to the director of the Conservation Commission and the county on whether it has met the work plan's protection and enhancement goals and benchmarks.
 - If the goals are being met –
 - The watershed group continues to implement the work plan.
 - If the goals and benchmarks are not being met -
 - The watershed group must submit to the director of the Conservation Commission an adaptive management plan to put the watershed group on a path to meet the goals.
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Progress on Work Plan Implementation

Goals are programmatic and resource oriented:

- Programmatic Goals – Those measuring progress on implementation of the work plan. Include landowner participation and stewardship plan implementation.
 - Natural Resource Goals – Are the identified critical areas being protected; is enhancement occurring on available funds.
 - Economic Resource Goals – Is the viability of ag being protected and enhanced.
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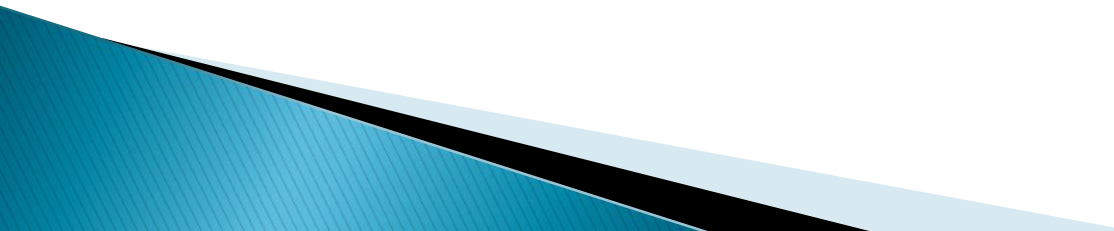
Progress on Work Plan Implementation

How would adaptive management of the work plan impact the individual stewardship plans that have been created?

- Agricultural operators implementing an individual stewardship plan consistent with a work plan are presumed to be working toward the protection and enhancement of critical areas.
 - If the watershed group determines that additional or different practices are needed to achieve the work plan's goals and benchmarks, the agricultural operator may not be required to implement those practices but may choose to implement the revised practices on a voluntary basis and is eligible for funding to revise the practices.
 - The watershed group will need to examine the character and extent of the failure to meet the program goals and look to the remaining landowners to achieve the objective.
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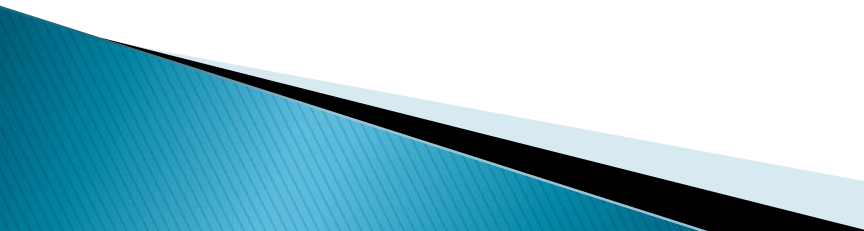
Progress on Work Plan Implementation

How would adaptive management of the work plan impact the individual stewardship plans that have been created?

- The watershed group could also “sweeten the pot” by providing additional incentives to landowners with existing stewardship plans to expand or enhance protections.
 - It would still be the choice of the landowner whether to accept the offer.
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Progress on Work Plan Implementation

Can landowners opt-out of the stewardship plans and programs?

- Yes, but withdrawal is conditional on the terms of any contractual agreements that may have been entered into for the installation of a practice.
 - Under RCW 36.70A.760, an agricultural operator participating in the program may withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract.
 - Creates a challenge for the watershed group who must still administer the program in a manner to achieve the goals and benchmarks identified in the work plan.
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Progress on Work Plan Implementation

If a landowner does opt-out, what does that do to the overall success of the VSP in the county?

If a landowner withdraws from the program and any applicable contractual obligations for management practices are no longer in effect, the watershed group must account for any loss of protection resulting from such withdrawals when establishing goals and benchmarks for protection in the work plan. RCW 36.70A.720(2)(b)(iii)-(iv) and RCW 36.70A.760.

Progress on Work Plan Implementation

Key distinction between “traditional GMA” approach to protection of critical areas, and VSP approach:

“Traditional GMA” approach – must be able to demonstrate protection of critical areas at the parcel scale. Demonstration typically done through regulatory buffers combined with enforcement program. Efforts to use landowner plans have been questioned because of challenges related to being able to demonstrate protections are met.

VSP approach – relies on evaluation at a watershed scale. Demonstrate progress on work plan goals every 5 years. Focus is on critical area function rather than per parcel.

Progress on Work Plan Implementation

Another key distinction between “traditional GMA” approach to protection of critical areas, and the VSP approach:

VSP approach – Requires reporting to the SCC on progress for achieving the goals of protection of critical areas, with protection and enhancement of viability of agriculture.

- State agency (SCC) evaluation of progress and may disagree with watershed group.
- Watershed group, and thus the county, may be kicked out of VSP if not achieving or adaptively management to get to goals.

Work Plan Failure and Consequences

Applies when: Opt-out / Fail Out / Insufficient Funding

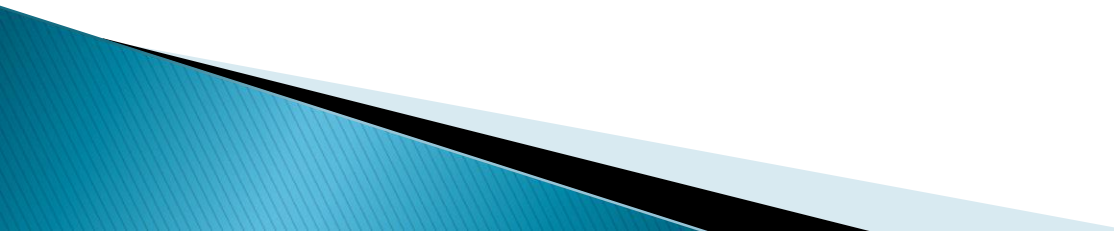
Opt-out: Not accept funds; or after accepting funds, 3, 5, 8 or any time after 10 years.

Fail-out: When the goals and benchmarks of the work plan are not being met and the watershed group fails to adaptively management to get back on track.

Insufficient Funding:

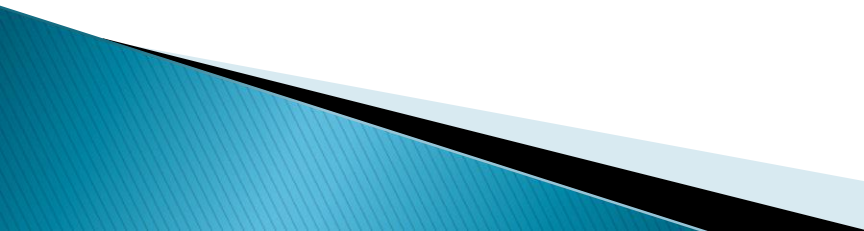
- The Commission has determined that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have not received adequate funding to implement a program in the watershed; or
- The Commission has determined that the watershed has not received adequate funding to implement the program.

Work Plan Failure and Consequences

- Focus on fail-out scenario.
 - When the director of the SCC concludes failure to meet goals and failure to develop adaptive management plan, work with the stakeholder group.
 - If after six months no progress on improvements, county and watershed group are notified the work plan has failed.
 - After notification, county has 18 months to take action.
 - **NOTE:** Shift in roles and responsibilities from watershed group to the county.
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Work Plan Failure and Consequences

County has 18 months to do one of the following:

- A. Develop, adopt, and implement a **watershed work plan** approved by Commerce that protects critical areas in areas used for agricultural activities while maintaining the viability of agriculture in the watershed.
 - Commerce shall consult with the state departments of Agriculture, Ecology, and Fish and Wildlife, and the Conservation Commission, and other relevant state agencies before approving or disapproving the proposed work plan.
 - The appeal of the Commerce decision under this subsection is subject to appeal under the Growth Management Hearings Board provisions;
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Work Plan Failure and Consequences

County has 18 months to do one of the following:

- B. Adopt development regulations previously adopted by another local government for the purpose of protecting critical areas in areas used for agricultural activities. The regulations adopted must be from a region with similar agricultural activities, geography, and geology and must:
 - i. be from Clallam, Clark, King, or Whatcom counties; or
 - ii. have been upheld by a growth management hearings board or court after July 1, 2011, where the board or court determined that the provisions adequately protected critical areas functions and values in areas used for agricultural activities;

Work Plan Failure and Consequences

County has 18 months to do one of the following:


- C. **Adopt development regulations** certified by Commerce as protective of critical areas in areas used for agricultural activities. The county may submit existing or amended regulations for certification. Commerce must make its decision on whether to certify the development regulations within ninety days after the county submits its request. If Commerce denies the certification, the county shall take an action under (a), (b), or (d) of this subsection. Commerce must consult with the departments of Agriculture, Ecology, and Fish and Wildlife, and the Conservation Commission before making a certification under this section. The appeal of the Commerce decision is subject to appeal under the Growth Management Hearings Board provisions; or

Work Plan Failure and Consequences

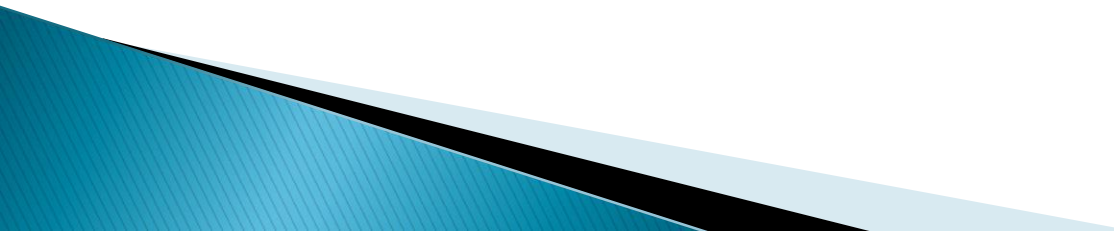
County has 18 months to do one of the following:

- D. Review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they relate to agricultural activities.
- The state department of Commerce is required to adopt a rule implementing these options. The rule is codified at WAC 365-191.
- The purpose of the rule is to *“implement procedures for two of those four options: Department approval of a watershed work plan under RCW 36.70A.735(1)(a); and department certification of development regulations under RCW 36.70A.735(1)(c).”* WAC 365-191-010.

Appeals of VSP Decisions

- One of the key principles in the original negotiations leading to the creation of the VSP was the desire of the counties to address the burden of appeals of county GMA decisions.
 - VSP legislation accomplishes this by shifting the decision points for appeal from the county to the Conservation Commission.
 - This is done by function of the point at which a final decision is made on the watershed group VSP work plan.
 - At no point is the work plan approved by the county legislative authority or by the watershed group itself. Indeed the development of the work plan by the watershed group is an activity delegated to the watershed group by the county.
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Appeals of VSP Decisions

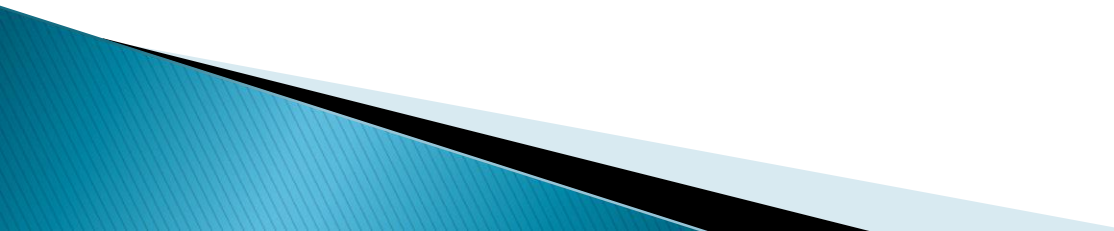
- The VSP statute directs the watershed group and not the county legislative authority to submit the work plan to the director of the Conservation Commission.
 - The VSP statute does not require an affirmative act of either the county legislative authority or the watershed group to approve the work plan or even to authorize the transmittal of the work plan to the director of the Conservation Commission.
 - Therefore there is no final action on the work plan at the point the work plan is submitted to the director of the Conservation Commission. The process of developing and approving the work plan is not completed yet. The submittal of the work plan to the Conservation Commission merely changes the venue of the next phase of the work plan development and approval process.
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Appeals of VSP Decisions

- A VSP work plan is not final until approved by the director of the Conservation Commission.
- The appeal of the decision to approve the work plan is not addressed in the petitions subject to review by the GMHB. The only VSP actions subject to review by the GMHB are certain actions the county must take after the failure of the work plan.
- Under the Administrative Procedures Act (APA), final agency actions are subject to appeal to superior court. Since the VSP statute is silent on the proper venue of an appeal of the final action of approval of a work plan, then the provisions of the APA would likely apply. The director of the Conservation Commission's final approval of a work plan would therefore be appealed to superior court.

Appeals of VSP Decisions

The GMHB may receive petitions relating to:

- Whether the approval of a work plan is not in compliance with the requirements of the program;
 - Whether the regulations adopted by Commerce are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or
 - That Commerce certification is erroneous.
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Review and Program Evaluation

At the County Level:

- VSP includes several elements for review and evaluation of the implementation of a work plan.
- VSP also includes consequences when progress is not being made towards the goals and benchmarks.
- Under the VSP, watershed groups are required to, in their work plan, establish baseline monitoring for:
 - i. Participation activities and implementation of the voluntary stewardship plans and projects;
 - ii. stewardship activities; and
 - iii. the effects on critical areas and agriculture relevant to the protection and enhancement benchmarks developed for the watershed.

Review and Program Evaluation

At the County Level:

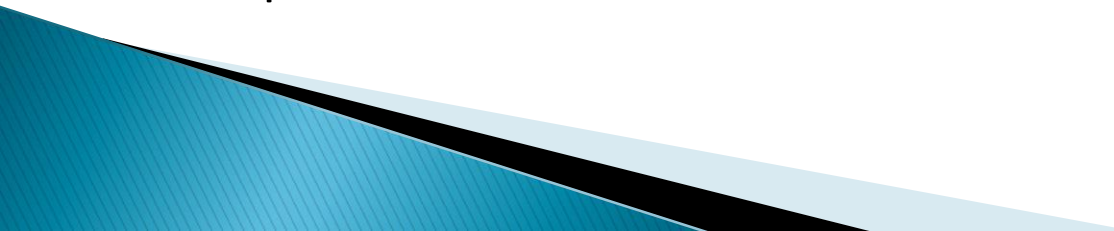
The work group must also conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans and accomplishments to the county and to the commission within sixty days after the end of each biennium.

Review and Program Evaluation

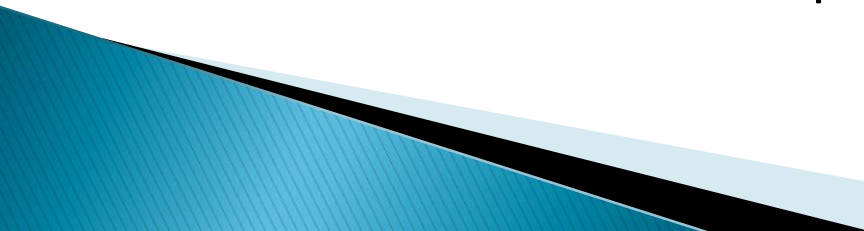
At the State Level:

The Conservation Commission is to review and evaluate the program's success and effectiveness and make appropriate changes to policies and procedures for implementing the program, in consultation with the statewide advisory committee and other affected agencies.

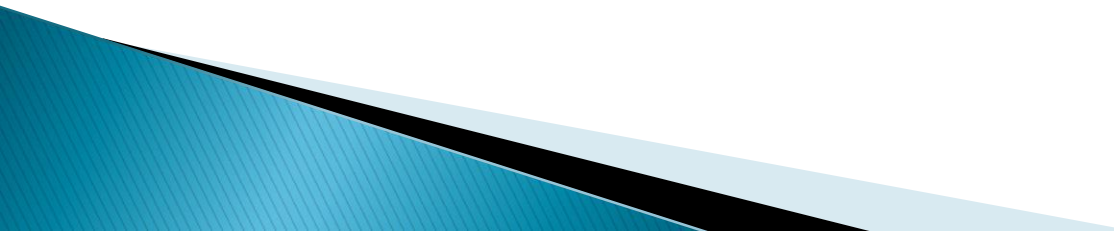
The Conservation Commission is also to:

- Report to the legislature on the general status of program implementation;
 - Conduct a review of the program, in conjunction with the statewide advisory committee, beginning in 2017 and every five years thereafter, and report its findings to the legislature by December 1st; and
 - Report to the appropriate committees of the legislature as required.
- 

Implementation

- 2015-17 Operating budget included \$7.6 million for development of VSP work plans.
 - Funding for each opt-in county is calculated at:
 - \$150,000 in year 1
 - \$120,000 in year 2
 - Includes funding for 1.5 FTE at the SCC.
 - Includes funding for agency participation.
 - Funding is required to go to the counties.
 - Contracts will be developed for each county with deliverables.
- 

Pilot Projects

- Thurston and Chelan counties were funded in 2013-15 biennium and are “initial implementers.”
 - Both have convened their work groups and are working to complete their work plans.
 - It took the two counties about 6 months to identify the method they wanted to implement the program (county staff vs other staff) and convene the work group.
 - It took time for both counties to hold initial informational meetings and approach local stakeholder groups for participation.
 - Both counties will require about 6 months to complete their work plans.
- 

Chelan County Experience

- ▶ Separate PowerPoint presentation

Thurston County experience

- ▶ Separate PowerPoint presentation

Questions?

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Washington State
Conservation Commission

