

OFFICE OF FARMLAND PRESERVATION

2009 Report to the Washington State Conservation Commission



DECEMBER 2009

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2009 Report to the Commission

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INTRODUCTION

In 2008, the Office of Farmland Preservation submitted a year-end report based on the overall condition of agriculture in Washington. The creating statute asked OFP to provide analysis and recommendations as to the major factors of declines in farmland in Washington. The 2008 report addressed the major factors and developed a suite of recommendations.

The 2009 report walks through existing efforts at preserving farmland as well as where the state is in regards to policy and existing programs. You will find a 2010 work plan from which we will base a large portion of our work as well as a summary of the past years four task force meetings. Finally, you will find the Farmland Preservation Task Force's state policy on farmland preservation. This is a set of seven points anchored by an overarching policy statement for decision makers to consider.

There are two appendices attached with this report. Appendix A illustrates the legislation OFP tracked over the 2009 legislative session and Appendix B is the full catalog of issue briefs prepared by OFP at the request of the Task Force. These issue briefs were used to update members on ongoing efforts relating to factors contributing to the issue of farmland preservation as well as briefs used to present new information for their consideration.

Also available to you as a resource is the OFP web page located by going to: <http://ofp.scc.wa.gov/>. Here you can track issues related to farmland preservation and keep up to date on emerging opportunities for farmers and groups interested in preservation. Another item of interest on the web page is a weekly feature titled Washington Agricultural News and Views. This is a weekly listing of links to news stories from around Washington reflecting agriculture and land use news items.

If you would like to receive the monthly OFP newsletter, simply send an email to igiuntoli@scc.wa.gov and ask to be included on the distribution list.

BACKGROUND

Recapping factors and impacts to farmland preservation

In 2007, the Washington State Legislature created the Office of Farmland Preservation within the Washington State Conservation Commission. Also created was the Farmland Preservation Task Force which is scheduled to sunset in December of 2010. One of the objectives of the Task Force is the development of a statewide strategy for farmland preservation.

Washington state is experiencing rapid population growth creating development pressures which have resulted in changes to the whole landscape of our state including farm land and open space.

The state is projecting to add two million new residents over the next twenty years resulting in the likely further reduction of farmland and open space throughout the state.

Several factors will continue to contribute to the decline of farmland in Washington including but not limited to:

- Population growth
- Aging farmer population
- Zoning changes
- Water availability
- Land price

Farmland preservation is a significant issue at the local, state, and federal level. This report explores the challenges and opportunities that preservation offers for our state. This paper will define farmland preservation, identify local and state efforts at preservation, identify the existing conditions of the agricultural sector in Washington, most importantly the state's inventory of land, current policies, and the level of commodity production, measure the effects of preserving agricultural land on the environment, economy, and land use and present a policy strategy for the state to consider.

FARMLAND PRESERVATION

Farmland preservation is an effort by governmental and non-governmental organizations to set aside and protect a region's farmland for the use, education, and enjoyment of future generations. It is often a part of regional planning and national historic preservation.

LOCAL FARMLAND PRESERVATION EFFORTS

There are several counties in Washington that have actively been preserving farmland with success for many years. The basis for the success can arguably be the community support, a reliable funding source, and a county strategy from which to work.

Table 1 details the financial commitment of local governments and private groups, to preserve farmland in 2008/2009. These are dollars raised either through Conservation Futures tax levy or private dollars focused on local efforts. This is separate from state of Washington efforts or federal efforts. Also included on this list are individual land trusts raising private funding not used as match for other grants.

Skagit Farmland Legacy Program	\$2,140,055
Whatcom County	\$60,724
RCO Farmland Preservation Program	\$5,820,000
King County	\$1,267,000
Snohomish County	\$187,215
Methow Conservancy	\$1,438,000
Island County	\$810,000
Jefferson County	\$520,000
Pierce county	\$700,000
San Juan County	\$700,159
Thurston County	\$400,000
Cascade Land Conservancy	\$2,546,000
Chelan Douglas Land Trust	\$362,000
Jefferson Land Trust	\$1,590,569
North Olympic Land Trust	\$547,300
Okanogan Valley Land Council	\$600,000
San Juan Preservation Trust	\$600,000
PCC Farmland Trust	\$1,400,000
	\$21,689,022

Table 1: Non-Federal Entity Farmland Protection Easement Cash Expenditures(\$) in the State in FY2009 (including land value, appraisal, survey, legal, closing, and monitoring costs, but excluding funds used for matching FRPP funds)

These dollars reflect a commitment of local citizens to protect farms in their county. These entities often work from a local agricultural strategy that has been created and adopted as a working document for agriculture in their respective county.

In 2007, it was recognized by staff of the Recreation and Conservation Office (RCO) and the Washington State Conservation Commission (WSCC) that there was a need to provide financial and technical assistance to county planning staff to develop local farmland preservation programs. By providing support to local entities to develop agriculture strategic plans, it was hoped farmland preservation actions could be sustained over time.

In 2008, RCO made available grant funds intended to assist counties in creating a farmland preservation program or to increase capacity of existing programs. A primary objective of the grants was to help counties develop strategies that could lead to future grant applications seeking funding for innovative farmland programs and acquisition of agricultural easements.

The 2009 legislature provided \$70 million for the WWRP grants in the 2009-2011 biennium. OFP recommended the continuation of the farmland preservation local grants in the amount of \$200,000 per fiscal year.

In fall of 2009, the RCO board approved another round of dollars to be used in a similar, more focused effort which continues to be developed in partnership between WSCC and RCO.

WASHINGTON STATE FARMLAND PRESERVATION EFFORTS

In 2002, the Washington State Legislature created the Agricultural Conservation Easement Account within the Washington State Conservation Commission. Legislative findings cited concerns regarding land costs and conversion of agricultural lands. The Legislative intent was specified for ‘creation of a program facilitating the use of federal funds, easing local governments’ establishment of similar programs, and assisting local governments to fight conversion of agricultural lands.’ As of 2009, the account has remained unfunded.

In April 2005, the Washington State Legislature established a statewide farmland preservation program to provide grants to preserve economically viable farmlands in Washington State and enhance ecological functions on those lands. This function is housed within the Washington Wildlife and Recreation Program which provides funds for the acquisition and development of outdoor recreation and habitat conservation areas. The farmlands preservation account was created with funds able to be used for the acquisition of farmlands, their enhancement or restoration, or both.

Since 2005, the funding board has awarded 19 grants for more than \$8 million. Grant recipients contributed more than \$11 million, bringing the total investment to more than \$19 million for farmland preservation.

EXISTING CONDITIONS OF AGRICULTURE POLICY

An overview of existing conditions of agriculture policy in Washington State

A map of Washington would show agriculture in one form or another in every county in the state. Agriculture is one of Washington’s top employers with the industry employing over 160,000 people.

Washington is a leader in agricultural production, not only in the United States, but internationally as well. Washington ranks 16th in the nation (2007) on value of all agricultural products sold. Washington’s food and agriculture industry contributes roughly 13% to the state’s economy. The market value of Washington production is up 27% over 2002 figures to \$6.79 billion (USDA 2007).

Washington has nearly 15 million acres in farm, representing roughly 39,000 farms. A majority of Washington farms are operated by individuals or families, and the average age of operators is 57 (Census 2007). Half of the 15 million acres in Washington is cropland. In 2005, nearly 1.9 million acres were in irrigation. Over the last few decades, there has been a significant decline in the number of farms statewide with the average farm shrinking in size to the 2007 average of 381 acres, down 11% from 2002 census data.

ROLE OF POLICY FOR AGRICULTURAL PRESERVATION

The role of policies for farmland preservation is critical. Statutes that regulate the conversion of agricultural land to non-agricultural land exist at the federal, state, and local levels; they all use a variety of methods to reach the same goal of preserving farmland. It is important that there is secured funding and a sound framework that allows all levels of government to pursue agricultural preservation programming.

FEDERAL POLICIES

The Farm Security and Rural Investment Act, commonly known as the Farm Bill, has been the primary source of agricultural preservation developed by the federal government. Within this act is the Farm and Ranch Lands Protection Program (FRPP). FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, or local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements and protect against development of productive farmland. In fiscal year 2010, the FRPP program is expecting applications for requested funds totaling \$8,648,198 protecting 3,989 acres.

STATE POLICIES

Washington has some policies in place to support agricultural preservation. The state has adopted or enabled local government to adopt policies such as agricultural zoning, conservation easements, right-to-farm laws, purchase of development rights, transfer of development rights, and the creation of the Office of Farmland Preservation within the State Conservation Commission.

An early tool developed for landowners by the legislature is the Open Space Tax Act (Act) of 1970. The Act allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use. The Act states that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.

Another effort still in effect is a 1980 executive order from then Governor Dixie Lee Ray directing all state agencies to evaluate and consider the impacts of agriculture on their land policy decisions and, in addition, *'give due regard to local government planning, zoning, or other local government agricultural land protection programs.'* [Executive Order 80-01]

The Washington State Department of Agriculture (WSDA) 2008 Future of Farming report provided several recommendations that related to the need to preserve the land base and support concepts that would make staying on the land viable. The Office of Farmland Preservation and WSDA have been collaborating on how to take those recommendations and pursue and promote to the benefit of farmers and ranchers across the state

RECENT LEGISLATION

The 2009 legislative session included several pieces of legislation that were introduced and would have indirectly effected farmland preservation. When describing an indirect effect, it includes profitability, viability, regulatory burden, and land use restriction. Some of these measures were passed, while many revert back to their original house of origin for the 2010 legislative session.

Legislation that indirectly contributed to farmland preservation was tracked through their respective categories; Water, Land Use, Regulations, Open Space Tax, Enhancing Agriculture, and General Interest. For a complete list of bills that were tracked, please see **Appendix A**.

One item that directly impacted the Washington State Conservation Commission (WSCC) was a measure passed that allowed WSCC to apply for WWRP grants, specifically, grants through the farmland preservation program. OFP staff along with WSCC staff are currently developing internal criteria that will be used to evaluate projects looking to partner with WSCC.

A list of measures related to farmland preservation which were signed into law include:

<u>Bill</u>	<u>Title</u>
SB 5120	Agricultural structures
EHB 1967	One hundred year floodplains
ESSB 5583	Water bank provisions
2SHB 1172	Transfer of Development Rights
EHB 1815	Current use valuation programs
SHB 1254	Grain commission
SHB 1733	Current use valuation programs
SSB 5350	Poultry slaughter and sale
2SHB 1580	Pilot local water mgmt. program
ESHB 1571	Water rights adjudication

Table 2: 2009 bills signed into law

LOCAL POLICIES

Individual counties in Washington have additional techniques to preserve agricultural land, including purchase of development rights, agricultural zoning, land use restrictions, farmland protection programs, conservation futures, conservation easements, and agriculture exclusive zones.

Agricultural zoning generally consists of a maximum ratio parcel development size ranging in Washington from one house per 1 acre to 1 house per 120 acres. Farmland protection programs can consist of their own easement purchase programs which match funds to leverage federal and state dollars. One of the most useful and valuable tools used by local governments are agricultural strategic plans which outline land use goals and objectives.

TRENDS

One of the immediate threats faced by farmers is the price of farmland. A white paper authored by Don Stuart of the American Farmland Trust illustrates how participation in the Current Use Tax program can serve as a rough measure of how much land has acquired a market value that exceeds its value as an agricultural business asset. As of 2008, there were roughly 11 million acres enrolled in Current Use agriculture designation. By comparison, there are roughly 14.97 million acres shown in active agriculture by the 2007 Census of Agriculture. This comparison would suggest that roughly 75% of the active agricultural land in Washington now has a fair market value that exceeds its value for agriculture.

Farm ground often appraises many times more than the current use appraised value, yet still inexpensive for development. The converse side is a farmer wanting to expand would be paying the highest and best use value which is growing homes. This trend contributes toward a possible net loss of farm to farm transactions.

Much of the state's growth over the past decades has occurred on former farm ground. The trend generally occurs with development first, which in turn creates demand for roads, schools and other critical services. It should be noted that zoning changes which occur at the local level using policies developed by the state which allow for the movement of growth boundaries into agricultural areas which can benefit a landowner wishing to transition out of farming, or add another level of impact to a landowner wanting to continue farming.

OFP 2009 ACTIVITIES

Early Action Projects	Action Taken
Report on UW mapping work for OFP	Reported to task force
Indicators for farmland preservation success	2009 Indicator Report
OFP	
Provide detailed comments to counties undertaking comprehensive planning	Provided comments to Okanogan County
Model policy for state farmland preservation	Developed and adopted
Submit final report on RCO grants	Completed
Work on initiating an agricultural strategic plan	Ongoing
Assist NRCS in increasing federal funds targeted for Washington	Completed
Continue work raised in Task Force recommendations	Ongoing
Provide comments on FRPP program changes	Submitted
Convene natural resource agencies to discuss recommendations	Convened meeting
Participate in the Natural Resource Re-Org	Completed
Present Task Force recommendations to Senate Ag Committee	Completed
Collaborate with WSDA on Crop Mapping	Completed
Work with DOR to revise Current Use exemption	Completed
Assist landowners	Ongoing
Farmland Preservation Task Force	
Meet quarterly for general business and tours	Completed
Assist in initiating a statewide farm transition program	Ongoing
Transition	
Continue development of a farm transition program	Ongoing
Attend transition network conference	Completed
Work with professional estate planners to develop a model statewide continuing education opportunity for attorneys.	Ongoing, working with collaborators on a low cost option
Clearinghouse	
Integrate all land programs onto OFP webpage as resource	Ongoing
Develop a draft publication for hard copy distribution	Draft completed
Outreach and Publications	
Assist counties in their comprehensive planning	Ongoing, as needed
Publication of Farmland Preservation Newsletter	Distributed 12 newsletters
Expand OFP-News Listserv	Ongoing, currently at 2250
Continue public and media outreach	Ongoing
Revamp OFP one pager	Completed
Partner with agricultural groups to promote preservation	Ongoing

OFP 2010 ACTIVITIES

Early Action Projects

- Finalize internal WSCC ranking criteria for RCO Farmland Preservation Program
- Present task force agriculture policy statement to WSCC for adoption
- Submit 2009 OFP Report to the Commission
- Present Farmland Preservation Indicator Report to WSCC for adoption

OFP

- Promote and work the task force agriculture policy statement with legislators and stakeholders
- Work with WACD on 2010 adopted resolutions as they relate to OFP
- Support the implementation of an Agriculture Impact Statement for state agency land management activities.
- Partner with agricultural groups and state agencies to promote farmland preservation.
- Assist counties in their comprehensive planning.
- Continue partnership and development of “Farmland at Risk of Conversion” maps
- Work with RCO on funding to counties to develop strategic plans for agricultural resources.

Farmland Preservation Task Force

- Continue to work with Task Force to implement 2008 recommendations
- Hold two meetings of the Farmland Preservation in Spring and Fall

Regulations and Permitting

- Initiate study of regulatory impacts to specific farm operations, looking at a variety of farm types and geographic areas.
- Explore programmatic permits for restoration activities on agricultural lands, specifically for HPA permits.

Transition

- Continue developing an ongoing farm transition program.
- Work with Northwest Farm Credit Service, Washington Bar, and others to develop/support a program

Clearinghouse

- Enhance the state clearinghouse on preservation incentives.
- Develop a hard copy version for distribution and online publication

Outreach and Publications

- Continue Farmland Preservation Newsletter
- Partner with agricultural groups to promote farmland preservation.

CLEARINGHOUSE UPDATE

Over the course of 2009, the foundation for the clearinghouse was established with the creation of the OFP web page. Staff completed the overall structure for the web page and began populating it with information relevant to landowners. The site can be found at <http://ofp.scc.wa.gov>. The page lists resources for each county in the state and includes information on local conservation futures programs, links to county web pages, information on local resources for farmers, ranchers and other agricultural producers, and links to other local farmland preservation programs. The web page also includes information on the latest news relating to agriculture and farmland preservation.

In 2009 OFP staff began to structure the web page to include information on incentive programs available state wide from federal, state and local agencies, as well as from non-profit organizations. The information will be organized in such a way that landowners anywhere in the state can access the information and tailor it to their specific needs. They will also be able to find contact information to enable them to take advantage of these programs.

Also in 2009, staff began development of a hard copy book of incentive programs which would be distributed to interested individuals and made available to customers at the conservation districts across the state.

Related to the incentives, OFP participated with the full State Conservation Commission to explore how the existing structure of the Conservation Commission and Conservation Districts could be used to improve service delivery to landowners of information on incentive programs available to them. This approach would provide a more efficient and focused method of working with landowners to help them understand the array of incentive programs that may be available to them.

INDICATORS REPORT

In 2009, the Farmland Preservation Task Force identified several indicators to begin charting the overall condition of agriculture as it relates to farmland preservation. The 2009 Farmland Preservation Indicator Report was adopted and recommended to the Washington State Conservation Commission members in December of 2009 for their consideration.

The data used for these indicators has come from a wide variety of places; including local government, state government, academic institutions, trade groups, and federal government databases.

Task Force members believe this suite of indicators is a first step in tracking how we as a state are doing in regards to preserving farmland.

An indicator is a tool that helps you know how far your project is from achieving your goals and whether you are headed in the right direction. Choosing the right indicator is essential for effectively evaluating your progress.

The right indicator should:

- Be relevant to the project.
- Be easily understandable to everyone interested in your project.
- Be easily measured.
- Provide reliable information.

These farmland indicators deal with the current state of our area's resources. They help us answer the question, "Are our activities helping to improve the condition and availability of farmland in Washington?" These indicators target specific concerns that affect the viability and future of agriculture.

The indicators found in this report are categorized to reflect the structure and layout of the 2008 Future of Farming report published by the Washington State Department of Agriculture:

- Making Agriculture a Priority
- Regulatory Barriers
- Resource Availability and Access
- Strengthen Competiveness
- Emerging Opportunities

To view this report or to request a hard copy, simply go to the Office of Farmland Preservation web page and search INDICATOR: <http://ofp.scc.wa.gov/>; or send an email to jgiuntoli@scc.wa.gov.

ISSUE BRIEFS

Appendix B contains issue briefs requested or brought up by the Farmland Preservation Task Force. These issue briefs represent follow up information either requested at a general task force meeting, or used to provide context for a conversation or presentation.

Many of these briefs provided background for task force members to be used in consideration in policy recommendations and discussions. The topics discussed in these briefs is below with the full briefs for each in Appendix B.

- Taxes: Open Space Two Year Death Benefit
- Taxes: Payment in Lieu of Taxes
- Taxes: Estate Tax
- Model Agricultural Impact Statement
- USDA/WSDA Meat Inspection
- Government Reform: Farmland Preservation Task Force
- Planning: Ferry County GMA Update
- Financial: Farm Credit
- NRCS: Conservation Reserve Program
- NRCS: Farm and Ranch Lands program Update
- Mapping: WSDA/WSCC Crop Mapping Update

- Census of Agriculture: Whatcom Update
- Water: Ecology Water Resource Program
- Water: Stock water Working Group
- Water: Change in Use/Transfers
- Water: Upper Kittitas Groundwater update

2009 TASK FORCE MEETINGS/TOURS

In 2009, the Task Force held four general meetings and two regional tours. The meetings were again held in different locations across the state to include; Olympia, Ellensburg, Okanogan, and Spokane Valley. All meetings were very well attended by not only members but the local public as well. Members heard great public input at each meeting and the overall tone was the continued need to be shining the light on these issues critical to preserving the land base necessary to continue the profitability of farming in our state.

The meetings were a mix of general discussions with invited guest speakers and presenters. Invited guests included:

- **Mason Conservation District** – Presented on small farmer workshops
- **South of Sound Community Land Trust** – Presented on the collaboration of several entities to move forward an agricultural easement.
- **WSDA** – Presented the 2008 Future of Farming report.
- **RCO** – Presented on the WWRP Farmland Preservation grant program.
- **North Yakima Conservation District** – Presented on the desire of the district to enter into a collaborative partnership to protect working lands and protect habitat.
- **Dept of Ecology** – Central Region director Tom Tebbs presented an Exempt Wells 101 discussion.
- **WDFW** – Illustrated the collaborative work in moving forward a grazing management agreement.
- **Trust for Public Land** – Presented their report “Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County.
- **Okanogan Conservation District** – Updated the task force on their supported local Okanogan market concept.
- **Northwest Farm Credit Service** – discussed programming available at NWFCFS, how they analyze credit, what programs are available for special cases, and farm succession plans.
- **NRCS** – Updated changes to the Farm and Ranch Land Protection Program.

Task Force members participated in two regional tours this year having the chance to tour Kittitas County and Okanogan County.

KITTITAS TOUR

The Kittitas Tour began by looking at a working land easement which Cascade Land Conservancy holds in the upper Kittitas area. The Tenaway Farm has 80 acres of working farmland and timberland. Tour participants were able to learn about that the project was identified through landowner interest and the prime soils present on the property. This parcel is also located in the faster growing portion of the county and also the area of the county experiencing issues with water availability through the exempt well issue.

The tour bus carried on through the heart of the exempt well situation in the Upper Kittitas. At the time of the tour, there was a considerable amount of uncertainty in the negotiations with Ecology and the county. This was explained to participants, but much of the detail was left out due to the sensitivity of those talks.

The tour concluded with two stops to highlight the irrigation efficiencies projects going on in the area which included cost share dollars for landowners with increased savings and better water uniformity. The role of the conservation district was highlighted as being central in the local effort of putting sound conservation practices on the ground.

OKANOGAN TOUR

The Okanogan tour began with a drive up the valley and onto the Okanogan Highlands where the tour stopped at the Nelson Ranch in Havillah, WA. Here the participants learned about efforts to put this ranch under a working land easement. The dichotomy between the state preservation grant program and the federal program were highlighted as the Nelson Ranch ranked as the top project on the state list while coming in near the bottom of the federal list. This creates issues in matching the state money with the federal money.

As the tour bus travelled to the northern portion of Okanogan County, participants learned about missed opportunities in the Nine Mile ranch area. As explained, the Nine Mile Ranch would have been a critical conjoiner for migrating game and provided a vital link between the lowlands and the highlands. The area was sold for development.

The next stop was at the Oroville State Park in Oroville, WA. Oroville borders with Canada and is a popular tourist destination for both American and Canadian tourists. This stop was a visual reminder of the pressures being experienced along the lake where a substantial amount of agriculture still takes place but is being threatened by primary and second homes of American and Canadians.

The tour continued to Driscoll Island. The area is located one mile south of Oroville and is flanked by the Okanogan and Similkameen Rivers as they flow south. Driscoll Island includes an agricultural lease that was recently updated. This stop was used to highlight the issue of public land management adjacent to private lands, addressing noxious weeds, fencing, and other management issues.

The tour wrapped up with a tour of a local winery that sources its fruit locally and regionally. Located in Omak, Rockwall Cellars is a family owned and operated Vineyard and Winery and is the first in the Central Okanogan.

Their family has been on the land since the 1920s. The historic crop was apples, and for three generations it was apples that their family raised and sold. Eventually, like so many families in the area, they got out of the slowing apple business, selling the orchards off piece by piece, until all that was left was the farming equipment and a few stacks of bins. In 2005, the family and future proprietors purchased their Great Great Uncles land across the road and began Rockwall Cellars.

STATE POLICY ON FARMLAND PRESERVATION

A proposal approved and adopted by the Farmland Preservation Task Force

A successful policy must accelerate all-round development and economic viability of agriculture. Farmers must be provided the necessary support, encouragement and incentives. It must focus both on income and greater on-farm and off-farm job and livelihood opportunities.

MAIN ISSUES

The following recurring and emerging issues for sustaining land preservation in Washington should be considered:

- Population pressure;
- Resource base and water availability;
- Investment in agriculture;
- Technical assistance

POLICY FRAMEWORK

Over the course of their 2009 meetings, the farmland preservation task force began development of a policy strategy for the state to consider. The basis for this effort is rooted in their collective experience as legislators, farmers, and advocates as well as public input. The task force felt that in order for the importance of agriculture to be elevated, a clear direct policy statement and goal should be put forth.

At the October 2009 meeting in Okanogan County, members held discussions based on what details would constitute a states policy on farmland preservation based on their past meetings, discussions, and public input. Following the October meeting, staff assembled an overarching policy statement and seven points to implement the statement. At the December 2009 meeting in Spokane County, the Task Force had lengthy discussions on the merits of the proposed policy and in the end unanimously adopted and recommended that this policy be moved forward to the Washington State Conservation Commission for their consideration.

STATE POLICY ON FARMLAND PRESERVATION

OVERARCHING POLICY STATEMENT:

Agriculture resources should be a high priority in Washington, equal to other issues in the state. Agriculture resources include the land, water, and energy necessary for profitable agricultural activity.

TO IMPLEMENT THIS POLICY STATEMENT:

1. The Governor should issue an executive order acknowledging the priority of agricultural resources in our state, and directing agencies to protect agriculture resources in their policy actions.
2. Appropriate funding should be made available to counties to develop strategic plans for agricultural resources in the county.
3. Temporary moratorium on acquisition of land by state agencies. When funding habitat restoration projects, the Task Force believes the most cost efficient and effective use for all funds is for the less-than-fee simple interest in agriculture resources with a range of options, including easements and leases. Fee simple acquisition is a tool that should be used in very specific and limited circumstances. When ranking state funding for projects, easements should be given a higher priority over acquisition of working farm and forest lands.
4. Agriculture resources should not be taken out of use for mitigation.
5. Regulations should not negatively impact agriculture resources. We should implement the OFP Task Force recommendation on regulations by examining the impact of regulations on a variety of farms and identifying strategies to reduce the specific impacts.
6. The Task Force recommends that the legislature undertake an examination of public land ownership, looking at state agency uses for land, the resource needs for maintenance, loss of working lands due to state agency acquisition, and other issues.
7. Support the implementation of an Agriculture Impact Statement for state agency land management activities.

OVERARCHING POLICY STATEMENT

Agriculture resources should be a high priority in Washington, equal to other issues in the state.

While agriculture ranks near the top in employment opportunity and economic security, there exists no clear statement on the resource needed to sustain our state's agricultural economy into the future. While our states farmers are among the most productive and profitable in the nation, the land base from which they ply their trade is simply being whittled away.

In 2007 when the Office of Farmland Preservation was created, the legislature codified their findings regarding the preservation of farmland to say that:

...there is a finite quantity of high quality agricultural land and that often this agricultural land is mistakenly viewed as an expendable resource. The legislature finds that the retention of agricultural land is desirable, not only to produce food, livestock, and other agricultural products, but also to maintain our state economy and preferable environmental conditions. For these reasons, and because it is essential that agricultural production be sufficient to meet the needs of our growing population, commitment to the retention of agricultural land should be reflected at the state policy level by the creation of an office of farmland preservation to support the retention of farmland and the viability of farming for future generations.

The task force supports this statement and believes the next step in elevating and supporting this is to make the preservation of the resource a higher priority in state policy.

IMPLEMENTING THE POLICY

- 1. The Governor should issue an executive order acknowledging the priority of agricultural resources in our state, and directing agencies to protect agriculture resources in their policy actions.**

Over the course of their meetings, the Farmland Preservation Task Force members were presented Executive Order 80-01 by Governor Dixie Lee Ray which is still in effect. The Executive Order directed that:

Every state department, commission, board or other agency of state government making decisions affecting the siting of energy facilities, disposal facilities, transportation systems or utility corridors and agencies making decisions on environmental and/or land use permits, shall consider farmland preservation when making decisions and, in addition, give due regard to local government planning, zoning, or other local government agricultural land protection programs.

A renewed effort directing departments and agencies to acknowledge the priority of agricultural resources in our state would elevate the importance of working lands in Washington when state agencies begin the process of identifying and acquiring lands in this state.

2. Appropriate funding should be made available to counties to develop strategic plans for agricultural resources in the county.

In 2007, it was recognized by staff of the Recreation and Conservation Office (RCO) and the Washington State Conservation Commission (WSCC) that there was a need to provide financial and technical assistance to county planning staff to develop local farmland preservation programs. By providing support to local entities to develop agriculture strategic plans, it was hoped farmland preservation actions could be sustained over time.

Grants were used to finalize, further, or begin discussions around a county agricultural strategic policy. Efforts included:

- Developing priorities for farmland to be preserved including identification of agricultural activities, GIS data analysis, and priority locations using GIS and county zoning plans;
- Developing a local farmland preservation strategy including but not limited to developing recommendations for consideration by local government, strategies for acquisition through fee or less than fee channels, landowner incentives, and voluntary actions;
- Developing a local process for indentifying high priority farms;
- Assisting local government in developing criteria for Open Space designations through the Public Benefit Rating System, and;
- Engaging local entities and local elected officials.

As of December of 2009, nine counties in Washington have adopted or are working from a strategic plan. All are located west of the Cascades and include: Clark, Island, King, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom.

The intent of this policy action is to support and encourage with financial assistance the development of county agricultural strategic policies.

3. Temporary moratorium on acquisition of land by state agencies. When funding habitat restoration projects, the Task Force believes the most cost efficient and effective use for all funds is for the less-than-fee simple interest in agriculture resources with a range of options, including easements and leases. Fee simple acquisition is a tool that should be used in very specific and limited circumstances. When ranking state funding for projects, easements should be given a higher priority over acquisition of working farm and forest lands.

Over the course of the task force meetings, the subject of state land acquisition has been one of the most consistent themes members have heard and discussed. One of the key elements of these discussions has been working to elevate the nature of conservation easements and allow them to be a preferred alternative to fee simple acquisition. Task force members understand and recognize that in certain instances, acquiring a parcel is necessary. Yet, they also recognize that easements are a tool which can be used to achieve a balance of habitat and riparian

goals while keeping the land under private ownership and in effect lessening the financial commitment of public dollars over the longer term.

A recent example of an easement being used occurred in Okanogan County. WDFW successfully negotiated an option to purchase a conservation easement on approximately 106 acres in Okanogan County. This action was funded by a grant from the Washington Wildlife and Recreation Program.

The terms of the conservation easement prohibit subdivision, restrict development, and allow for fencing of the riparian area to protect the conservation values of the property. The property has approximately one mile of frontage on the Chewuch River. Protecting the property with a conservation easement provided substantial long term protection for listed steelhead, spring Chinook and bull trout, and preserves it for wildlife movement, including the greatest density of migratory mule deer in the Methow watershed.

In the briefing documents to the WDFW commission, it was noted that since this is a conservation easement, **the Department will incur no operating and maintenance costs other than periodic site visits for compliance monitoring.** (Emphasis added)

The task force believes this can be an economic driver which can keep lands in production, while allowing for an infusion of capital which in turn can be used to make more viable the individual farming operation.

4. Agriculture resources should not be taken out of use by mitigation.

A host of local, state, and federal environmental laws require that environmental impacts of new development actions are avoided, minimized, and, if necessary, compensated through mitigating actions. When impacts are to environmental features such as wetlands, compensatory mitigation typically takes the form of enhancement or creation of similar features off the development site. A trend that has producers concerned is the siting of mitigation areas on existing agricultural operations. In some cases, it will be suitable to mitigate these features on farms and forests.

A tool that could be employed is the use of conservation markets. A conservation market is a program that facilitates payments to landowners for environmental improvements. In a regulatory context, conservation markets provide a way to fulfill mitigation and compliance responsibilities by paying landowners for conservation projects. Conservation markets are also known as ecosystem service markets, conservation and mitigation banks, and water quality trading programs.

5. Regulations should not negatively impact agriculture resources. We should implement the OFP Task Force recommendation on regulations by examining the impact of regulations on a variety of farms and identifying strategies to reduce the specific impacts.

Regulations on working lands managers have been identified as an element critical to farmland preservation. A producer is able to manage his operation more effectively and efficiently if some of the many regulations are coordinated or made more understandable. The Task Force is concerned about how producers are expected to understand the litany of federal/state/local regulations that may or may not be applicable to their operation.

Regulations are infrequently evaluated to determine if they are still needed, if they are resulting in the desired outcome, or how they may or may not conflict with subsequent regulations.

6. The Task Force recommends the legislature undertakes an examination of public land ownership, looking at state agency uses for land, the resource needs for maintenance, loss of working lands due to state agency acquisition, and other issues.

During the course of the Task Force discussions, members began to develop a study concept for the legislature to undertake in regards to working lands and Governor Gregories Working Lands Initiative.

Over the past several years, there have been many legislative directed efforts to look at state land acquisition. It is important to note that the primary focus the Task Force would advocate is how all land acquisitions have impacted or have targeted private working lands. The below list of studies dating back to 2005 illustrates a sampling of what the legislature has asked agencies to undertake.

- **2005** – Toward a Coordination Strategy for Habitat and Recreation Land Acquisitions in Washington State (RCO)
- **2006** – A Review of the Department of Natural Resources Commercial Lands Program (DNR)
- **2008** – Legislative Options to Protect Rural Communities in Northeast Washington from Disproportionate Economic, Agricultural, and Environmental Impacts when Upstream Water Rights are Purchased and Transferred for Use, or Idled and Used as Mitigation, in a Downstream Watershed or County (ECOLOGY)
- **2008** – Report on the Inventory of WDFW Purchased or Leased Lands Acquired for Mixed Agriculture and Fish and Wildlife Habitat (WDFW)
- **2009** – Conservation Tools: An Evaluation and Comparison of the Use of Certain Land Preservation Mechanisms. (RCO)

How this recommendation differs from the above reports is that it is focused primarily on working lands and the desire of the task force to keep working lands working. Much of the information in the recommendation can be found scattered through the above reports but new efforts would have to be undertaken to fully understand the relationships between the state agency mandates and the governors working land initiative. One of the primary concerns the task force has heard is the state's lack of resources for management of properties that can lead to noxious weed issues and inhibit the ability of the state land managers to adequately address the land needs. Public feedback and factual evidence has illustrated that if lands are kept in private working ownership and managed for a specific resource need, you not only preserve the working land, but you achieve the resource goals while not having to expend tax payer dollars for acquisition. Tax dollars may be better directed to maintenance of existing lands and for cost share with private landowners.

A study would seek to better understand this relationship.

7. Support the implementation of an Agriculture Impact Statement for state agency land management activities.

The 2008 report to the Washington State Conservation Commission provided by the Office of Farmland Preservation included recommendations adopted by the Farmland Preservation Task Force specific to state agency land managers.

The state agency land management recommendation section held that private ownership of lands was the preferred alternative to state agency farmland acquisition. The Task Force believed that state agency acquisition of agricultural lands should be put on hold unless these agencies have developed and adopted land acquisition and management plans that follow farmland preservation strategies.

One component of that strategy included the use of an Agricultural Impact Statement (AIS). The Task Force recommended:

- Development of an Agriculture Impact Statement (AIS) for agency land management activities.
- Agencies should be required to complete an AIS whenever an agency undertakes an activity that requires the agency to complete a SEPA analysis. The AIS would be submitted to the WSCC for review and comment.

The 2008 Washington State Department of Agricultural (WSDA) Future of Farming report also discussed the use of an AIS and recommended to “Construct a model AIS that can be used to assess and document the effect of state agency actions prior to their implementation.”

An example of where an AIS would be useful is when state agencies begin the process to acquire land. Whenever a state agency proposes to acquire any interest in property (fee simple or easement, or other), or when an agency proposes to become a lessee or lesser, that agency would complete an AIS and submit the AIS

to the State Conservation Commission for review and comment. The agency would then address the WSCC comments provided in response to the AIS prior to making the final determination on the acquisition.

WSCC-OFP would submit a report to the Governor and Legislature by December 1st of each year on the results of agency acquisitions and their impact on agricultural production.

OFFICE OF FARMLAND PRESEVATION

Appendix A

2009 OFP Tracked Legislation

Appendix A – OFP Tracked Legislation

<u>House Bills</u>	<u>Title</u>	<u>Senate Bills</u>	<u>Title</u>
HB 1091	Stock-watering groundwaters	SB 5517	Meat & poultry inspection
HB 1117	Hydraulic project approval	SB 5992	Community agriculture worker
HB 1179	Public groundwaters permit	SB 5114	Water rights relinquishment
HB 1266	Water nonuse cause	SB 5299	Columbia and Snake rivers
HB 1267	Nonuse of a water right	SB 5578	Water resource management
HB 1268	Water rights relinquishment	SB 5692	Water nonuse cause
HB 1269	Crop rotation definition	SB 5754	Sustainable instream flows
HB 1306	Open range laws on pub lands	SB 5888	Groundwater withdrawals
HB 1494	Water bank & exchange	SB 6007	Growth management act
HB 1509	Stock watering	SB 5362	Minimum hourly wage
HB 1613	Meat & poultry inspection	SB 5781	Open range laws on pub lands
HB 1627	Water storage sites	SB 5067	Hunter access to property
HB 1635	Lakes mgmt strategic plan	SB 5076	Grain commission
HB 1921	Geoduck diver licenses	SSB 5005	Naturally raised beef cattle
HB 2007	Waterway gravel removal	SB 5002	Livestock & poultry program
HB 2022	Sustainable instream flows	SSB 5004	Local meat production
HB 2235	Water management improvement	SSB 5165	Development rights transfer
HB 1603	Minimum hourly wage	SSB 5272	Wildlife interactions
HB 1814	Farm labor contracting	SSB 5486	Lakes mgmt strategic plan
HB 2032	Community agriculture worker	SSB 5533	Water rights adjudication
HB 2241	WA's agricultural economy	SB 6092	Milk pricing task force
SHB 1232	Commercial agriculture	SSB 5545	Park & open space allocation
HB 1810	Park & open space allocation	SSB 5647	Pilot local water mgmt prog
HB 1979	Current use crops valuation	SSB 5792	Land growing Christmas trees
HB 1626	Wildlife interactions	SSB 5817	Farm & ag lands valuation
SHB 2102	Ag slaughter stimulus acct	SSB 5968	Agricultural land protection
HB 1242	Waste of agricultural crops	SSB 6063	Equestrian activities/lands
2SHB 1797	Rural & resource lands study	SB 6097	Ag commodity commissions
ESHB 2278	Livestock nutrient mgmt		
SHB 2275	Use of propane by farmers		
SHB 1489	Water resource management		
SHB 1490	Greenhouse gas emissions		
HB 2291	Ag commodity commissions		
HB 1660	Agricultural preservation		
HB 2282	Commercial & farm vehicles		
SHB 1334	Columbia and Snake rivers		
HB 2292	Ag commodity commissions		

Appendix B

2009 Task Force Issue Briefs

Issue Brief Table of Contents

Taxes: Open Space Two Year Death Benefit	3
Taxes: Payment in Lieu of Taxes	7
Taxes: Estate Tax	11
Model Agricultural Impact Statement	14
USDA/WSDA Meat Inspection.....	16
Government Reform: Farmland Preservation Task Force.....	17
Planning: Ferry County GMA Update	19
Financial: Farm Credit.....	21
NRCS: Conservation Reserve Program.....	22
NRCS: Farm and Ranch Lands program Update	24
Mapping: WSDA/WSCC Crop Mapping Update	26
Census of Agriculture: Whatcom Update.....	27
Water: Ecology Water Resource Program.....	28
Water: Stock water Working Group	30
Water: Change in Use/Transfers	33
Water: Upper Kittitas Groundwater update	35

TAXES: OPEN SPACE TWO YEAR DEATH BENEFIT

ISSUE:

Two year death benefit regarding Open Space, Agricultural and Timber Lands (chapter 84.34 RCW) and Timber and Designated Forest Lands (chapter 84.33 RCW)

SOURCE:

Jake Anderson, Farmland Preservation Task Force Member

RELATIONSHIP TO OFP:

Open Space, Agricultural and Timber Lands (chapter 84.34 RCW) and Designated Forest Lands (chapter 84.33 RCW) were established to preserve open space lands for food and forest crop production, for scenic beauty and enjoyment and for the economic and social well-being of the state and its citizens. The 1970 legislature declared that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue the existence of these open space lands.

If a property is approved for enrollment in either program, the property is assessed at its current use and not its potential use. This usually results in a lower assessed value than the highest and best use, or market value. This is the incentive for keeping the land in classification or designation. The disincentive is when the property is removed from classification or designation. Generally, if the land is removed or withdrawn, it becomes subject to an additional tax representing the difference between the property tax paid as classified and the amount that would have been paid for the previous seven years. Also, if land was classified under chapter 84.34 RCW, applicable interest and penalty will be due. If land is removed from designation, it becomes subject to a compensating tax representing the difference between the property tax paid as designated and the amount that would have been paid for the previous nine years.

The additional tax, interest, and penalties, or compensating tax were designed to be a deterrent to removing from classification or designation and thereby alleviating the potential for conversion out of either program.

There exist several exceptions to additional and compensating tax including:

The sale or transfer of land within two years after the death of the owner of at least 50 percent interest if the property has been designated as forest land under chapter 84.33 RCW or classified as current use under chapter 84.34 RCW, since 1993. [RCW 84.33.140(13)(h)]

The relationship to OFP is the potential for this land to be sold or transferred while not incurring the additional or compensating tax, which could actually be the preferred alternative, even though it would no longer be classified. For context, a background on the additional tax and compensating tax is described below.

DESCRIPTION/BACKGROUND:

Most property is valued and assessed at its true and fair, or highest and best, value for purposes of imposing property taxes. However, article 7, section 11 of the State Constitution allows the Legislature to enact legislation assessing certain types of real property at its present or current use for purposes of imposing property taxes. Two programs for this type of valuation have been established: designated forest lands and current use which includes open space lands, farm and agricultural lands, and timber lands. Properties in these programs may be valued for tax purposes according to their current use, not their highest and best use.

Removal from Current Use: Land classified under the current use program must remain classified for at least ten years following initial classification. If the use of the property changes, the owner requests withdrawal, or a sale of the property is made and the new owner does not sign a notice of intent to continue the classification, the land is withdrawn or removed from classification and additional tax, interest, and penalty apply.

Additional tax is calculated for the prior seven-year period, based on the difference between the current use valuation during the seven-year period and the market value. Interest is calculated at 12 percent per year, the same as for delinquent property taxes. The penalty is 20 percent of the sum of the additional tax and interest. An owner may appeal the removal from classification to the county board of equalization. Unless reversed upon appeal, the land is revalued to market value as of January 1 of the year of removal. If the owner wishes to withdraw the land from classification after the initial ten years, they must notify the assessor two years prior to having the land withdrawn. The withdrawal then triggers the requirement to pay additional tax and interest as described above, but no penalty is imposed. An exception to the requirement to pay additional tax, interest, and penalties is provided for in a number of circumstances.

Removal from Forest Land Designation: There is no 2-year notice or minimum time period for land in designated forest land because whenever this type of land is removed, then there is no interest and penalty only compensating tax. If the use of the property changes, the owner requests withdrawal, or a sale of the property is made and the new owner does not sign a notice of intent to continue the designation, then the land is withdrawn or removed from designation and the compensating tax applies.

Compensating Tax [RCW 84.33.140(11)] is the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal.

One of the exceptions to both additional and compensating tax that this paper examines is the sale or transfer of land within two years after the death of the owner of at least 50 percent interest if the property has been designated as forest land under chapter 84.33 RCW or classified as current use under chapter 84.34 RCW, since 1993. [RCW 84.33.140(13)(h)]

Legislative History on Exception

Transfers by inheritance were traditionally not treated as a transfer triggering removal from the program. A 1991 Attorney General Opinion (AGO 1991 No. 11) made it clear that an inheritance is a transfer. Unless the new owner signed a continuance, the property was removed from the program. At that time, the exception to this was in effect regarding the transfer within two years of the death of the owner. In 1992, the Legislature removed the exception to the payment of additional and compensating taxes for property sold within two years of the death of an owner while land classified under the open space or timber tax laws retained their classification when a transfer occurred due to an inheritance. (ESHB 2928)

In 2001 the legislature restored the exception for payment of additional and compensating taxes for properties that have been in current use programs continuously since 1993. (SHB 1450)

In 2003, the Legislature made a technical revision to the exception by clarifying that the date on the death certificate would be used to implement the exception to payment of additional and compensating taxes related to the death of the owner.

There have been recent legislative attempts to modify the exceptions to additional and compensating tax. In 2007, HB 1515 was a proposed measure that would have allowed property owners enrolled in a

current use property tax program to transfer the property between one another or to withdraw the property on the death of the owner, without penalty. The bill did not pass. In 2009, SSB 5424 (An act relating to interest rate and penalty provisions in the current use program) would have allowed property owners in the current use program to provide the county assessor with notice of intent to withdraw property from the program after the initial ten-year classification period. The two year notice in advance would no longer be required. Also the bill would have addressed the method in which interest is calculated on removals from current use. The interest rate would be changed from the rate of 12 percent per year to the federal short-term rate plus two percentage points (the same rate for excise taxes in RCW 82.32.050). The bill did not pass.

The change in 2001 reflects the current RCW and reads as follows:

RCW 84.34.100(6)(k)

The additional tax, applicable interest, and penalty specified in RCW 84.34.100(4) of this section shall not be imposed if the removal of classification pursuant to RCW 84.34.100(1) of this section resulted solely from: the sale or transfer of land within two years after the death of the owner of at least 50 percent interest if the property has been in current use since 1993.

The 1991 Attorney General Opinion describes the process of the death exception as follows.

The death of the owner results in a transfer that takes the land out of classified or designated status, resulting in the loss of the special property tax treatment as classified land (e.g., open space) or forest land. The two-year exemption only applies to the additional tax or the compensating tax. It does not operate to maintain the special property tax treatment.

An heir who executes a continuance of classification or designation to maintain the special property tax treatment does not lose the ability to take advantage of the two-year exemption. An heir can continue using the land as it is currently classified or designated or, within two years of the death of the owner of at least a 50 percent ownership interest in the property, sell it, and the land could be removed without the imposition of additional or compensating tax if the new owner does not sign the notice of continuance.

ISSUE FOR FARMLAND PRESERVATION:

Scenario:

Grandma and Grandpa have 500 acres of timber and ag land.

Since 1985, 250 acres were continuously classified as designated forest land while the other 250 acres were continuously classified as farm and agricultural land.

Grandma and Grandpa established in their will that when Grandpa passed away, the property would go to their son. When Grandpa passes away, the son now has two years to transfer or sell the property to avoid the taxes associated with both programs or continue using the land as it is currently classified or designated. At this point, several scenarios that affect the future of the land becomes worth noting.

1. The son continues with both parcels being enrolled. The positive here is that the land remains classified; the negative is that if the son sells outside of the two year window, he or whomever he sells to will be responsible for the additional and compensating taxes if the land is later removed from classification or designation.
2. The son creates an LLC and transfers the land to the LLC within the two year window. This way he avoids the additional and compensating taxes and can continue to manage the land as before; the negative is that once the land is transferred to the LLC and the LLC does not sign the notice of continuance, the land will no longer receive the reduced assessment. Also, the transfer of land to the LLC may trigger real estate excise tax.
3. If one were to assess the additional tax, interest, and penalty for removals from current use and the compensating tax for removals from designated forest land, it is most likely that the forest land designation is the least onerous and may therefore be the likelier of the two parcels to be developed. One could conceivably buy the 500 acres, pay the less onerous compensating tax on the forest land, keep the remaining land classified as farm and agricultural land, and then develop the forested parcels.

TAXES: PAYMENT IN LIEU OF TAXES

ISSUE:

Payments in Lieu of Taxes

SOURCE:

Discussion at 2009 Okanogan Task Force Meeting

DESCRIPTION/BACKGROUND:

The Farmland Preservation Task Force has requested further information on the Payments in Lieu of Taxes (PILT) program which exists in statute. In many cases state-owned habitat and recreation lands are acquired from private landowners. Because state-owned lands are tax-exempt, the purchase of private property by the state removes those lands from the local tax base.

WDFW has been paying PILT to counties since approximately 1966. PILT payments are intended to provide counties tax payments in lieu of what would have been paid under private ownership. Payments are distributed to the local taxing districts and for weed control.

Counties that elect to receive PILT are required to keep a record of all fines, forfeitures, etc. they receive for WDFW game code violations and remit the money collected to the State Treasurer for deposit in the Public Safety and Education Account. Counties have the option to receive PILT using one of three different payment calculations.

These three options are:

- an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter [84.34](#) RCW
- the greater of seventy cents per acre per year
- the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned.

RCW 77.12.201 and 77.12.203 provide that the legislative authority of the county may elect by giving written notice prior to January 1st of any year the payment option they wish to receive.

The authority for counties to be compensated for fines and fees is found under RCW 77.12.201.

The legislative authority of a county may elect, by giving written notice to the director and the treasurer prior to January 1st of any year, to obtain for the following year an amount in lieu of real property taxes on game lands as provided in RCW [77.12.203](#). Upon the election, the county shall keep a record of all fines, forfeitures, reimbursements, and costs assessed and collected, in whole or in part, under this title for violations of law or rules adopted pursuant to this title and shall monthly remit an amount equal to the amount collected to the state treasurer for deposit in the public safety and education account established under RCW [43.08.250](#). The election shall continue until the department is notified differently prior to January 1st of any year.

The authority for counties to be compensated for open space, .70 cents and acre, and 1984 payments are found under RCW 77.12.203

(1) Notwithstanding RCW [84.36.010](#) or other statutes to the contrary, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW [77.12.201](#), an amount in

lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount shall not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres.

PILT payments are required on game lands in each county. Game lands, as used in RCW 77.12.203 and RCW 77.12.201, mean those tracts one hundred acres or larger owned in fee by the department and used for wildlife habitat and public recreational purposes.

In addition to game lands less than one hundred acres, lands that were transferred to WDFW after April 23, 1990 by other state agencies are exempt from the PILT requirement. However, when WDFW acquires game lands less than one hundred acres that are contiguous to existing game lands of one hundred acres or more, Counties will receive PILT for the new acquisition.

In 2009, WDFW provided PILT payments to 14 counties covering 482,756.23 acres and paid approximately \$474,428.21.

In 2005, the legislature enacted Engrossed Substitute Senate Bill 5396 (ESSB 5396 - Expanding the criteria for habitat conservation programs.), Section 16 of this legislation required the then Interagency Committee for Outdoor Recreation (now Recreation and Conservation Office), WDFW, DNR, and Washington Counties to collaborate on a report to determine the fiscal impacts of payments in lieu of taxes (PILT) that were provided for in various sections of ESSB 5396.

The group submitted a report to the legislature in 2006. The report examined amongst other things some of the varying issues that may be best described as gray areas in the statute. Chief among those was RCW 77.12.203(1) ***an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW*** and the lack of a dispute process for DNR to dispute assessments.

Typically disputed assessments are appealed to a county's Board of Equalization. However, in this case the assessments will not be presented to the landowner, and it is not clear how the State Treasurer would know whether a particular assessment is disputable.

The 2006 report examined the open space concept further.

Assuming the intent of WDFW's PILT requirement is to pay open space rates under the Open Space Act (Chapter 84.34 RCW), Counties may have been applying an incorrect rate of reduction. There may be some confusion concerning tax reductions under the Open Space Act of 1970.¹

There are three land use designations within the Open Space Act. These designations, also known as Current Use designations, allow for reductions in taxes below market value rates. The specific tax reduction categories are; Open Space Agriculture, Open Space Timber, and Open space-Open Space.

In order for landowners to receive one of these designations, they must first meet the definition as found in RCW 84.34.020.

Open Space Agricultural

Open Space Agriculture has different acreage requirements. Over twenty acres, 5-20 acres, and under 5 acres. If you are enrolling parcels over twenty acres, it must be devoted primarily to the production of livestock or

¹ 2006 Report to the Legislature - A Projection of the Impacts of Payments in Lieu of Taxes As Mandated by Engrossed Substitute Senate Bill 5396

agricultural commodities for commercial purposes.² 5-20 acres has per acre income requirements³, and also needing income requirements are acres enrolled under 5 acres.⁴

Once enrolled in Open Space Agriculture, parcels receive a reduction in the assessed value. This is determined at the county level.

Open Space Timber

Means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes.

Open space-Open Space.

Open Space land (designated as Open Space-Open Space) is any land that is designated by a county comprehensive plan, or, the preservation would conserve and enhance natural or scenic resources, or, protect streams or water supply, or promote conservation of wildlife preserves, nature reservations or sanctuaries or other open space. A full definition is found at RCW 84.34.020(1).

Each County must adopt its own public benefit rating system to determine the percent reduction from market value when a property is classed in the public benefit category of open space.⁵ All counties vary. Some may have a max reduction of 25%, some 90%. For example, the Okanogan County max reduction for Open Space-Open Space is 50%.⁶ The reduction has to be adopted by resolution by the County legislative authority (which is the County commissioners).

It is possible that counties have been applying a tax reduction under the Open Space Act, but basing that reduction on either open space-timber or open space-agriculture rates which may not meet the definitions as detailed.

The 2006 report noted that with respect to agricultural land in particular, the open space-agriculture tax reduction will generally be lower than an open space-open space reduction. If counties have been applying the incorrect current use reduction under the Open Space Act, it is possible they have been collecting less money than they are authorized to collect.

An example of the fiscal impacts of a change in PILT payment is found in Yakima County. Currently Yakima County receives PILT payments based on 1984 rates. Their planning commission is recommending to the county commissioners that they elect to receive payments based on Open Space-Open Space. In 2009, Yakima County received a little over \$104k. Should the new payment be endorsed, their PILT would exceed \$350k.

ISSUE FOR FARMLAND PRESERVATION:

Since the Farmland Preservation Task Force has been regularly meeting, the issue of state management of lands has been one of the most consistent messages members have heard in meeting across the state.

At a recent Task Force meeting, members discussed the insufficient funds to adequately manage and maintain state lands. A strategy began to develop from this conversation and that is to encourage state purchasers of

² RCW 84.34.020(2)(a)

³ RCW 84.34.020(2)(b)

⁴ RCW 84.34.020(2)(c)

⁵ 84.34.055

⁶ Okanogan Assessor

land to first consider the use of easements and lease arrangements while recognizing that acquisition in the right circumstances is encouraged.

Easements are something not new to WDFW. At a recent WDFW Commission hearing, commission members voted to approve several land acquisitions and less than fee simple projects. WDFW successfully negotiated to purchase a conservation easement on approximately 106 acres owned by the Lundgren Family Limited Partnership in Okanogan County. This action will be funded by a grant from the Washington Wildlife and Recreation Program.

In the summary before the commissioners, it was highlighted that since this is a conservation easement, the Department will incur no operating and maintenance costs other than periodic site visits for compliance monitoring. The Department receives in return an easement that meets their goals, while conversely, a family remains active in the management of the land.

The Task Force would like to see more working land easements and lease arrangements that work to achieve the goals of Governor Gregoire's Working Lands Initiative, while also meeting the wildlife/habitat goals of WDFW.

When looking at this arrangement in an income/expense model, it is important to highlight that this may be more profitable to the county over time. Our state economically is in a time where we need to be thinking of what could be an income generator to the state.

TAXES: ESTATE TAX

ISSUE:

Washington State Estate Tax

SOURCE:

September 2009 Farmland Preservation Task Force Meeting

DESCRIPTION/BACKGROUND:

Washington's present estate tax was adopted by the Legislature in 2005, effective May 17, 2005. It is known as a "stand-alone" tax because it is not directly tied to the federal estate tax (although some references to the federal law are contained in the state statute). This tax replaces the former "pick-up" estate tax, consisting of the amount of credit allowed for state taxes under the federal estate tax. Washington's previous estate tax was overturned by the State Supreme Court on February 3, 2005, when the Court determined that the phase-out of the federal credit for state taxes adopted by Congress in 2001 applied to Washington's tax. This effectively repealed the previous tax for decedents who died on and after that date and required refunds to be paid to estates that had paid more than the allowable federal credit amount.

The current Washington estate tax threshold is \$2,000,000. This means the total gross estate (value of *all* assets) of a deceased individual must be \$2,000,000 or more in order to be subject to Washington estate tax. There is no sunset provision associated with the current statute. It will remain at the \$2,000,000 threshold unless there is a legislative/statute change.

If an estate is subject to the Washington estate tax, there are deductions an estate may be entitled to take including an Unlimited Farm Deduction. The Unlimited Farm Deduction is available to those estates that qualify based on the criteria outlined in RCW 83.100.046 and the corresponding WAC 458-57-155.

Both are attached for reference. More information regarding Washington estate taxes can be found at DORs website: http://dor.wa.gov/content/FindTaxesAndRates/OtherTaxes/tax_estate.aspx

FREQUENTLY ASKED QUESTIONS REGARDING FARM DEDUCTION

What requirements must be met in order to take the estate tax farm deduction?

- The land must have been farmed by the decedent or a member of the decedent's family at the time of the decedent's death.
- The decedent must have been a citizen or resident of the United States .
- The farm must comprise at least 50 percent of the total estate's adjusted value.
- The farm must pass from the decedent to a qualified heir.
- At least 25 percent of the value of the estate must consist of farm land that was actively managed for at least five of the last eight years.

Do you have examples of how the estate tax deduction for farms works?

A. The decedent died May 18, 2005 , with an adjusted gross estate valued at \$4 million. The decedent was a dry land wheat farmer and owned land and equipment valued at \$2.5 million. The farm value is more than half the total value of the estate.

Taxable estate	\$4,000,000
Less \$2,500,000 farm deduction	- \$2,500,000
Less \$1,500,000 statutory exemption (for 2005 deaths)	- \$1,500,000
Washington taxable estate	\$0

B. The decedent died August 28, 2005 , with an adjusted gross estate valued at \$5 million. The value of his farm is \$2.3 million. The estate cannot deduct the value of the farm because it is less than half the total value of the estate.

Taxable estate	\$5,000,000
Less \$1,500,000 statutory exemption (for 2005 deaths)	- \$1,500,000
Washington taxable estate	\$3,500,000

The estate owes \$470,000 in Washington estate tax. While the decedent did not qualify for the farm deduction, the estate may be able to pay the tax over 15 years.

C. The decedent died May 23, 2006 , with an adjusted gross estate valued at \$1.6 million. The decedent was a tenant hay farmer who owned \$800,000 in farm equipment. The value of the equipment is half of the total estate so it can be deducted.

Taxable estate	\$1,600,000
Less \$800,000 farm deduction	- \$800,000
Less \$2,000,000 statutory exemption (for 2006 deaths)	- \$2,000,000
Washington taxable estate	\$0

D. The decedent died January 1, 2006 , with an adjusted gross estate valued at \$6 million. The decedent owned farm land and equipment valued at \$3 million. The value of the farm and farm equipment is 50 percent of the adjusted gross estate, so it can be deducted.

Taxable estate	\$6,000,000
Less \$3,000,000 farm deduction	- \$3,000,000
Less \$2,000,000 statutory exemption (for 2006 deaths)	- \$2,000,000
Washington taxable estate	\$1,000,000

Based on the tax rate of 10%, the estate owes \$100,000 ($\$1,000,000 \times 10\%$) in Washington estate tax.

Are there any limits to how much value can be deducted from the estate tax?

No. It is an unlimited deduction.

Are farms subject to the estate tax?

No. The value of farms and timberlands are deducted from the taxable value of an estate as long as certain requirements are met. This deduction applies to the land, farm structures and farming equipment.

What happens if the farmland and equipment comprises less than 50 percent of the total value of the estate?

The value of the farm and equipment becomes taxable, but the estate still benefits from the general deduction of \$1.5 million for deaths in 2005 and \$2 million for deaths in 2006 and beyond.

In regards to the estate tax deduction for farms, what is the definition of a farm?

The definition of farm includes stock, dairy, poultry, fruit, furbearing animals, and truck farms; plantation; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands.

Do woodlands or timber operations qualify for the farm deduction?

Yes, if the estate otherwise qualifies for the deduction. Timber operations is defined as the planting, cultivating, caring for, or cutting of trees; or the preparation, other than milling, of trees for market.

Would my estate qualify for the deduction if I am a tenant farmer?

Yes. The taxable value of the estate of a qualifying tenant farmer can be reduced by the value of agricultural personal property (equipment).

Would a farm qualify if it is in a partnership, corporation or trust?

Yes, if the estate otherwise qualifies for the deduction.

Must the heir continue farming the inherited property?

No. Farming can be discontinued or the property sold without affecting the deductibility of the farm.

How is "member of the decedent's family" defined?

"Member of the decedent's family" means:

- An ancestor of an individual; or
- Spouse of an individual; or
- A lineal descendant of the individual, of the individual's spouse, or a parent of the individual; or
- The spouse of any lineal descendant; or
- A legally adopted child of an individual.

MODEL AGRICULTURAL IMPACT STATEMENT

ISSUE:

Model agricultural impact statement for Washington state agencies acquiring land

SOURCE:

Farmland Preservation Task Force Recommendations

RELATIONSHIP TO OFP:

The 2008 report to the Washington State Conservation Commission provided by the Office of Farmland Preservation included several recommendations adopted by the Farmland Preservation Task Force.

The report recommendations were segregated by topic including state agency land managers.

The state agency land management section held that private ownership of lands was the preferred alternative to state agency farmland acquisition. The Task Force believed that state agency acquisition of agricultural lands should be put on hold unless these agencies have developed and adopted land acquisition and management plans that follow farmland preservation strategies.

One component of that strategy included the use of and Agricultural Impact Statement (AIS). The Task Force recommended:

- Development of an Agriculture Impact Statement (AIS) for agency land management activities.
- Agencies should be required to complete an AIS whenever an agency undertakes an activity that requires the agency to complete a SEPA analysis. The AIS would be submitted to the WSCC for review and comment.

The 2008 Washington State Department of Agricultural (WSDA) Future of Farming report also discussed the use of an AIS and recommended to “Construct a model AIS that can be used to assess and document the effect of state agency actions prior to their implementation.”

DESCRIPTION/BACKGROUND:

The idea of an AIS is not a new concept in Washington. In 1980, then governor Dixie Lee Ray signed an Executive Order directing all state agencies to evaluate and consider the impacts of agriculture on their land policy decisions. This order is still in effect.

An example of where an AIS would be useful is when state agencies begin the process to acquire land. Whenever a state agency proposes to acquire any interest in property (fee simple or easement, or other), or when an agency proposes to become a lessee or lesser, that agency would complete an AIS and submit the AIS to the State Conservation Commission for review and comment. The agency would then address the WSCC comments provided in response to the AIS prior to making the final determination on the acquisition.

WSCC-OFP would submit a report to the Governor and Legislature once every two years on the results of agency acquisitions and their impact on agricultural production.

ISSUE FOR FARMLAND PRESERVATION:

Elevate the importance of working lands in Washington when state agencies begin the process of identifying and acquiring lands in this state. The preferred alternative would be a conservation easement which would allow for the continued private production of agriculture while, depending on the terms of the easement, allow for public access on a limited basis to achieve the goals of the acting agency.

POLICY RECOMMENDATION:

Agricultural impact statements analyze the potential impact of public construction projects on farmland and farm operations and recommend ways to lessen those impacts.

The Washington State Conservation Commission will prepare an agricultural impact statement if an acquisition will be over five acres and have a significant impact on a farm operation.

The Washington State Conservation Commission may prepare an agricultural impact statement if an acquisition will be less than five acres and have a significant impact on a farm operation.

“Farm Operation” is defined as “any activity conducted solely or primarily for the production of one or more agricultural commodities in sufficient quantity to be capable of contributing materially to the operators support.”

The agricultural impact statement shall include:

- A list of the acreage and description of all land lost to agricultural production and all other land with reduced productive capacity, whether or not the land is acquired.
- The Commission’s analyses, conclusions and recommendations concerning the agricultural impact of the project.

Upon completing the impact statement, the Commission shall distribute the impact statement to the following:

- The project lead.
- The governor's office.
- The senate and House committees on agriculture and transportation.
- All local and regional units of government which have jurisdiction over the area affected by the project.

The AIS is intended to aid the entity in making decisions on project alternatives. It discusses the economic impact on individual farm operations, identifies the acres lost or impacted, and conveys the concerns of landowners. The AIS may include recommendations on steps that may be considered by the entity to lessen impact on farmers and their operations.

The Commission would be notified when the entity has sufficient information to describe a proposed project’s purpose and scope, and can identify the landowners that will be impacted.

USDA/WSDA MEAT INSPECTION

ISSUE:

Meat Inspection

SOURCE:

Farmland Preservation Task Force

DESCRIPTION/BACKGROUND:

Under federal law, meat and poultry processing establishments may apply for either federal or state inspection. Washington is one of twenty-three states that relies solely on the federal meat inspection program. Twenty-seven states currently have state meat and poultry inspection programs that are approved by the United States Department of Agriculture (USDA).

For state meat and poultry inspection programs to receive federal approval, they must enforce requirements that are at least equal to those of the federal Food Inspection Safety Service. Up to 50 percent of the operating costs of federally approved state program costs are reimbursed by the federal government, as well as training and other assistance. State inspected meat may be sold in intrastate commerce. The 2008 federal Farm Bill provides for limited sales of state inspected meat in interstate commerce.

Persons may have their own animals slaughtered by a custom farm slaughterer and custom meat facilities licensed by the state. Though these facilities are inspected for sanitation by the Washington State Department of Agriculture, the meat processed at these facilities is not inspected. Under state law, it is unlawful to sell, trade, or give away uninspected meat or meat products. Uninspected meat must be clearly marked and labeled "not for sale." Uninspected meat may be prepared only for the use of the owner, who must be a household user which also includes nonpaying guests and employees.

POLICY RECOMMENDATION:

Support SB 5517 ([Establishing a meat and poultry inspection program](#)) or companion bill HB 1613. These bills would establish a state meat and poultry inspection program for Washington State that is to be at least equal to those requirements imposed under federal law. The two measures find that:

- (1) Several states administer state meat and poultry inspection programs at facilities for which inspection by the federal food safety inspection service of the United States department of agriculture is not readily available; and
- (2) A state inspection program would support the needs of local producers who wish to sell to local consumers, aid in developing niche markets and the supply of low-volume specialty meat products, and increase the ability to supply inspected meat products at farmers markets, retail outlets, and restaurants that specialize in locally produced agricultural products.

Provides that: (1) The meat and poultry inspection program established under the act enforce requirements that are at least equal to those imposed under federal law including the federal meat inspection act, the poultry products inspection act, and the humane methods of slaughter act; and

- (2) Products inspected under the act may be sold in intrastate commerce.

GOVERNMENT REFORM: FARMLAND PRESERVATION TASK FORCE

ISSUE:

Government Reform – Farmland Preservation Task Force

SOURCE:

Governor request

BACKGROUND OF FARMLAND PRESERVATION TASK FORCE:

The 2007 legislature passed into law [SSB 5108](#) which created the Office of Farmland Preservation. SSB 5108 was codified as [RCW 89.10 – Farmland Preservation](#). The Office and task force were created as part of [Governor Gregoire's Working Lands Initiative](#).

As part of her initiative, the governor recognizes the positive impact working farms provide to our state. In her policy brief on the Working Lands Initiative, she notes that:

*Working farms and forests mean jobs for Washingtonians. We have the highest per acre forest yields in the nation, providing family-wage jobs to over 50,000 people. The combined agricultural and food industry employs more people than any other business or industrial sector. Today, the total economic impact of the food and agriculture industry in Washington is estimated at more than \$29 billion annually, about 13 percent of the state economy. **Policy Brief, Gov. Gregoire***

The task force recognizes the importance of preserving working lands and the impact this has on our state both economically and culturally. Their work is driven by the desire to continue the economic and cultural tradition of agriculture in our state, recognizing that preserving the land base is the fundamental base for achieving this goal. In the end, if there is no ground to grow lettuce, then no lettuce will be grown.

The task force is codified in statute under [RCW 89.10.020](#) which also provides for a sunset date for the task force of January 1, 2011.

The Office and Task Force are focal points for collecting and vetting preservation strategies and goals. The legislature directed the task force to provide input to the Office on an analysis of the major factors that have led to past declines in the amount and use of agricultural lands in Washington and of the factors that will likely affect retention and economic viability of these lands into the future including, but not limited to, pressures to convert land to nonagricultural uses, loss of processing plants and markets, loss of profitability, productivity, and competitive advantage, urban sprawl, water availability and quality, restrictions on agricultural land use, and conversion to recreational or other uses.

The 18 member task force was appointed by the Governor in October of 2007 and consists of six farmer representatives from each region in the state, four legislators, two county commissioners, and a representative of the Washington Association of Conservation Districts, three state agency representatives and two non voting members representing the USDA-NRCS and the newly named Dept. of Commerce.

ANALYSIS:

In its first 18 months, the task force set a course for a strong and firmly established state farmland preservation program. Over this time, the task force traveled to six regions of the state, meeting with farmers, ranchers and local citizens to receive input on preservation priorities resulting in key policy recommendations.

One of their first tasks they identified as being critical was the adoption of a mission statement to reflect their goals. The Task Force adopted a mission statement stating that:

Our mission is to promote the vitality of farming, farmers, and ranchers by ensuring that we will continue to have productive agricultural lands in Washington State. We will achieve this through policy recommendations to the Governor, the Legislature, the Office of Farmland Preservation and others and by enlisting public support. Programs will be voluntary, recognize local priorities, and provide for economic incentives.

In December 2008, the Task Force developed seventeen recommendations and voted individually on each recommendation. Each recommendation was reached with a consensus vote of the Task Force. These recommendations were submitted in a report to the Washington State Conservation Commission. [2008 Office of Farmland Preservation Report to the Commission](#)

During the 2009 legislative session, task force members briefed the Senate Agriculture committee on their work, recommendations, and ongoing efforts. This proved to be an invaluable opportunity to impress upon the committee members the importance of having growers and agencies collectively asking questions and developing recommendations specific to preserving farmland. Washington continues to lose productive farm ground each year. Couple this with the estimated hundreds of thousands of acres of working land set to change hands in the next 20 years, the importance of the task force and their inputs and strategies for preserving this land becomes critical.

RECOMMENDATION:

Allow the task force to sunset on January 1, 2011. This would allow for one more year of quarterly meetings, or twice annual meetings to occur and establish a timeline to complete the task force work. It would provide the opportunity to maximize the collective knowledge of the task force and allow for the continued building of a solid farmland preservation program in Washington. At the statutory conclusion of the task force, the Conservation Commission would transition into the advisory role for the Office of Farmland Preservation.

PLANNING: FERRY COUNTY GMA UPDATE

ISSUE:

Ferry County Adopted Ordinance 2009-04 regarding Development Regulations

SOURCE:

Ferry County Planning May Draft Document

DESCRIPTION/BACKGROUND:

Ferry County is currently in the process of updating their county Comprehensive Plan as required by the Growth Management Act (GMA). According to Dept of Commerce, Ferry County adopted Ordinance 2009-04 regarding development regulations on August 25, 2009 by the planning commission.

This is the process that was brought up recently with the WSCC meeting in Ferry County. The recently adopted ordinance made significant changes to Section 9.00 (Agricultural Land). In short, Ferry County has chosen to not designate Agricultural Lands of long term Commercial Significance (Section 9.04 Designation).

Upon review of the Natural Resources Conservation Service soil maps and other criteria (see Appendix A), no Agricultural Lands of Long-Term Commercial Significance were currently found to exist in Ferry County. (Section 9.04 Designation)

This text references Appendix A. Here you can find the criteria for designating agricultural lands of long term significance in the county. It begins by detailing the agricultural history of Ferry County and characterizes the development pressure by stating

There is little to no demand for land for industrial or commercial development, and little demand for residential development. There is utterly no pressure to “pave over the farmlands”, as in many counties of Washington State.
Appendix A, Ferry County Agriculture – Overview

The overview also says that almost 80 percent of the agricultural crop of Ferry County is in raising and marketing beef cattle. It also references the 2007 Census of Agriculture which showed other uses of the land including farms raising sheep or goats or horses; a few raising barley or other grains besides hay. There are also two aquaculture or “fish farms”, providing marketable products, and a few farms raising produce marketed directly to local consumers.

The overview concludes that most of these enterprises would be classified more as “hobby farms” than as “agricultural lands of long-term commercial significance.”

Appendix A continues by outlining the county’s response to GMA regarding agriculture. When the GMA was adopted in 90/91, emphasis was on protecting “the right to farm” which the county agreed with “enthusiastically”. They comment that they exceeded the GMA’s requirements for posting notices on deeds, and identifying in their comp plan that agriculture was welcomed and encouraged anywhere in the county.

They continue by saying that in the late 90’s the focus of GMA shifted from protecting the “right to far” to mandating “the duty to farm”. This began the long struggle through appeals based on failure to designate Agricultural Lands of long term Commercial Significance.

So, the planning commission, with agricultural advisors⁷, embarked on an intense program to map and designate these lands. Mapping began with designation of “prime soils” by the Natural Resources Conservation Service (NRCS). Ferry County then reviewed statistical models provided by Community, Trade and Economic Development (CTED), including the model used successfully for Lewis County. The model was adapted for use in Ferry County.

Using this model and the NRCS soil classification system of Class I-VI

Class	Percent of mapped soils (Not Including Reservation)	
1 - No limitations	0%	(zero acres)
2 - Some limitations	21 %	(4,440 acres)
3 - Severe limitations (non-irrigated)	20 %	(4,300 acres)
3 - Severe limitations (prime, only if irrigated)	47%	(10,160 acres)
4 - Very severe limitations (prime, only if irrigated)	12%	(2,500 acres)

80% of the mapped prime soils in Ferry County are subject to severe limitations.

While the prime soils of Ferry County are subject to severe limitations as pertains to agriculture, these same soils are quite suitable for timber production and much of the mapped prime soils have already been designated for this resource.

Appendix A describes that it was one of three counties that according to the 2002 Census of Agriculture carried an overall operating loss for agriculture (highest in the state). In 2007, the average farm showed a profit of roughly \$45,000. Ferry County carried an operating loss that had doubled to \$7,000 per farm.

In describing the overall agriculture scene, Appendix A shows that Ferry County’s average farm is almost nine times the state average at 3,230 acres. The agricultural advisory group assured the Planning Commission that this anomaly of average farm size is due to the fact that the Ferry County beef cattle industry is entirely dependent on grazing allotments and/or leases in the public lands. Although public property, these grazing allotments/leases are considered farm acres in the Census of Agriculture.

They also cite the proximity to markets as a key factor in the county’s inability to sustain commercial significance. They cite their remoteness restricts the ability of agricultural producers to be competitive. For a county heavily dependent on the beef industry, the nearest cattle market is in Davenport, Lincoln County.

The appendix concludes with the methodology for scoring lands to be designated.

⁷ Daniel Fagerlie, Director of Washington State University Ferry County and Colville Reservation Extension Agriculture and Natural Resources Faculty; Lloyd Odell, District Manager of Ferry Conservation District; Chandra Neils, Natural Resources Conservation Service Area Resource Soil Scientist; Patrice Beckwith, Natural Resources Conservation Service District Conservationist; Ferry County Cattleman’s Association; Ferry County generational agricultural producers; Eagle Cliff Grange; Kettle River Grange; Malo Grange; appraisers and assessors.

FINANCIAL: FARM CREDIT

ISSUE:

Farm Credit System

SOURCE:

2009 December OFP Task Force meeting

DESCRIPTION/BACKGROUND:

Northwest Farm Credit Services will be presenting on farm credit and associated areas of interest. In the current economic climate, there are questions surrounding access to credit, especially as it relates to farming operations.

For the Future of Farming report, NW Farm Credit prepared a series of issue papers which I have included with this brief.

Banks lend to farmers for a variety of purposes, including (1) short-term credit to cover operating expenses; (2) intermediate credit for investment in farm equipment and real estate improvements; (3) long-term credit for acquisition of farm real estate and construction financing; and (4) debt repayment and refinancing. Commercial banks are the largest source of agricultural credit, followed by the Farm Credit Banks.

ISSUE FOR FARMLAND PRESERVATION:

To highlight a current event story regarding the impact of farm credit, recently members of the Washington State Mexican Fruit Growers Coalition met with legislators in Olympia and other various agencies (Commission on Hispanic Affairs, Washington State Department of Agriculture, etc.) about urgent financial and economic issues that are adversely impacting Mexican fruit growers in Washington State. In particular, the group discussed recent problems accessing lines of credit and long-term financing from banks/lending institutions.

The inability to obtain long-term financing and lines of credit is causing a significant, negative impact to the economic health and well-being of Latino/Hispanic fruit growers in Washington State as well as their local communities. Many Latino/Hispanic fruit growers in Washington State have lost or been denied operating lines of credit from banks/lending institutions for the upcoming growing season.

While in Olympia, the Coalition told lawmakers that if something is not done immediately to help Latino or Hispanic growers (in Washington State) access lines of credit and long-term financing, many of its members will be forced to go out-of-business within the next 3 to 12 months.

NRCS: CONSERVATION RESERVE PROGRAM

ISSUE:

Expiration of CRP contracts

SOURCE:

Biodiversity Incentives Workgroup

DESCRIPTION/BACKGROUND:

The Conservation Reserve Program (CRP) provides technical and financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns on their lands in an environmentally beneficial and cost-effective manner.

CRP reduces soil erosion, protects the Nation's ability to produce food and fiber, reduces sedimentation in streams and lakes, improves water quality, establishes wildlife habitat, and enhances forest and wetland resources. It encourages farmers to convert highly erodible cropland or other environmentally sensitive acreage to vegetative cover, such as tame or native grasses, wildlife plantings, trees, filter strips, or riparian buffers. Farmers receive an annual rental payment for the term of the multi-year contract. Cost sharing is provided to establish the vegetative cover practices.

Washington has 1.5 million acres now enrolled in the program.

OPTIONS/CONSIDERATIONS

Washington farmers are facing big decisions on what to do with their land as hundreds of thousands of acres of CRP contracts are due to expire in the next few months.

First and foremost, landowners with expiring contracts should contact their local FSA or NRCS office for information. Each landowner's situation is unique. There may be options available and they need to meet with the landowners and discuss their specific situation.

From a state incentive based approach, one option may be to consider the taxing structure in Washington State. In regards to the Open Space Laws, if there is CRP on the land it is considered agricultural income and stays the same as any other farm ground.

The Washington Open Space Tax law provides for several classifications of land in order to reflect the current use value rather than the highest and best use value. One classification, Farm and Agricultural Land, provides a significant reduction in land value resulting in lower property taxes if enrolled in the program. Lands enrolled in CRP are classified as Farm and Agricultural Land. ([RCW 84.34.020 \(2\)\(ii\)](#))

Landowners with CRP land enrolled receive their payment from the federal program and also remain classified as Farm and Agricultural Land.

One of the questions surrounding removal from CRP is the ramifications to the taxing structure of the land.

Located in the Open Space classification statutes is a sub classification of Open Space; Farm and Agricultural Conservation Land. ([WAC 458-30-242](#))

In 1992, the Legislature amended [chapter 84.34 RCW](#) to include a new sub classification called farm and agricultural conservation land under the open space classification in the current use program.

Lands eligible for this sub classification are those formerly classified as farm and agriculture lands that no longer meet the criteria, such as the minimum income requirements or not actively farming. Also, traditional farmland that is not classified, has not been devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture is also eligible for this sub classification.

While this sub classification may not provide as high of a tax break, it avoids the land from being removed from the farm and agricultural land classification, resulting in the payment of additional tax, interest, and penalty.

1992 amendment is based on the legislative intent to “maintain, preserve and conserve” land for the production of food and fiber. The Legislature recognized the shift from classified farm and agricultural land to open space by farmers who are no longer farming, **but who want to keep the land available for farming in the future.** Based on a local legislative determination, these properties **could serve as a “land bank” that might be available for future commercial agriculture.**

There's not a lot said in statute or in rule regarding the sub classification of farm and agricultural conservation land. An agricultural county might view these parcels as providing a buffer for years when markets are good and land is in short supply. Alternatively, in an urbanizing county, the land could be seen as potentially available for open space use with little appreciation of its potential utility for farming.

All this being said, it still may not serve as enough incentive for a landowner to re-classify, but if they know they are not able to farm, they avoid the tax penalties of being removed from classification.

The first option for producers with expiring CRP land should be to contact their local FSA and NRCS offices and see what options are available. Each landowner's situation is unique. FSA and NRCS agencies have provided general information through newsletters and a national mailing, but for the options available, they need to meet with the producers and discuss their specific situation.

The second option should be for landowners to consult with their local assessor for more information about the sub classification of farm and agricultural conservation land.

NRCS: FARM AND RANCH LANDS PROGRAM UPDATE

ISSUE:

FRPP National Criteria – Impacts to Washington

SOURCE:

Discussion at 2009 Okanogan Task Force Meeting

DESCRIPTION/BACKGROUND:

First established in 1996, the Farm and Ranch Lands Protection Program (FRPP) provides matching grants to states, local, tribal and non-profit entities for the purchase of agricultural conservation easements. The program is administered by the USDA Natural Resources Conservation Service (NRCS).

To qualify, farmland must: be part of a pending offer from a State, tribe, or local farmland protection program; be privately owned; have a conservation plan for highly erodible land; be large enough to sustain agricultural production; be accessible to markets for what the land produces; have adequate infrastructure and agricultural support services; and have surrounding parcels of land that can support long-term agricultural production.

The 2008 Farm Bill made changes to the program, these are highlighted below.

Recent Legislative Changes

The 2008 Farm Bill changed the purpose of the program from protecting topsoil to protecting agricultural use. It changed the role of the Secretary of Agriculture from purchasing easements to providing funding for the purchase of easements.

The 2008 Farm Bill made churches, universities, and hospitals eligible as cooperating entities. It added land that supports the policies of a State or local farm and ranch protection program as eligible land. It also specifically included forestland as eligible land.

The 2008 Farm Bill established ‘certified entities’ as a special classification of entities that have demonstrated excellent performance in administering FRPP. Certified entities are eligible for cooperative agreements that can obligate funding for five or more years without re-negotiating the cooperative agreement. Non-certified cooperating entities are eligible for cooperative agreements that can obligate funding for three to five years.

The 2008 Farm Bill gives the cooperating entities the option of selecting an industry approved appraisal standard, either the Uniform Standards for Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisition.

ISSUE FOR FARMLAND PRESERVATION:

Washington State is agriculturally diverse, not only in crop production, but land diversity. Irrigated and non-irrigated land produces economically viable crops in both urbanizing and non-urbanizing counties equally. Farm size is diverse, with the larger farms occurring in Eastern Washington.

FRPP projects are scored based on a point's scale and national figures. The point total is used to rank projects against each other and form a ranked list. Funding is not based on the ranked list, rather an allocation to the state NRCS office. Funding levels determine how far down the ranked list projects will be funded.

Recently, the Office of Farmland Preservation was able to communicate with several land trusts in the state on the implications of the national criteria within the FRPP on Washington projects.

State wide projects fell short in several of the criteria areas. There are several areas in the state where much spending and focus is being directed. Yet, these areas score poorly due to the fact that these areas are neither growing fast enough or have a high population density. Most received zero points in each of these criteria areas out of the 200 points possible. Yet, state and local programs have targeted these areas in part due to landowner willingness, development pressures, affordability, and the ability to protect large areas for less dollars.

Another concern is a short fall in the criteria for proximity to other protected areas. Most projects received zero points out of 100 because there were no other protected lands within one mile of projects.

NRCS has been actively engaged in modifying the ranking criteria to better reflect the dynamic farming environment in Washington. At the time of this issue brief, NRCS staff has been working to gain stakeholder input on how better to serve Washington. There has been some great discussion which will lead to positive changes. NRCS will be briefing the Task Force on these changes. Following the presentation, OFP staff will integrate these changes into this issue brief.

POLICY RECOMMENDATION:

Draft letter for task force to send to national NRCS office.

MAPPING: WSDA/WSCC CROP MAPPING UPDATE

ISSUE: WSDA/WSCC Crop Mapping Update

SOURCE: WSDA

RELATIONSHIP TO OFP:

Having accurate data in the field can be used to layer into other GIS databases. This would allow for a clearer real time picture when viewed with land values/soils/relationship to other agriculture.

DESCRIPTION/BACKGROUND:

1. WSDA has been mapping agricultural land use in GIS format since 2002, with statewide coverage very near completion.
2. Currently, 75 % of crop data is generated by WSDA staff via ground surveys, the rest obtained from outside sources.
3. Outside data collected from such sources as FSA & GWMA have been obtained, but are no longer available to the mapping project.
4. The crop data is not refreshed annually statewide, as the resources have not been available to do so. Currently, field crops classifications are updated on a 3 to 5 year schedule. The goal of course is to update crop data annually.
5. Both WSDA and the Conservation commission see value in current agricultural land use data, so we have expressed interest in a joint project to update mapping data, using conservation district staff as an additional resource.
6. A pilot project was formed for the 2009 season with a few select conservation districts - Thurston, Kittitas, Pend Oreille, and Cascadia.
7. The project involves WSDA providing a structured geodatabase and SOP (Standard Operating Procedure) to each district. This geodatabase contains the last known crop data for each area. Conservation staff will then update the data, theoretically while conducting normal business activities, and return the updated data to WSDA at the end of the season to be loaded into the statewide crop geodatabase.
8. If the pilot project shows promise, it may be expanded in 2010.

ISSUE FOR FARMLAND PRESERVATION:

Accurate crop and land data in a combined database, may prove to be an extremely effective tool in assessing risk of farmlands across the state and allow users to identify areas at risk of conversion out of farmland. Visually and with data to support, this may prove effective in leveraging funds from both state and federal sources for targeting working lands at risk.

CENSUS OF AGRICULTURE: WHATCOM UPDATE

ISSUE:

Whatcom County 2007 Ag Census discussion update

SOURCE:

Whatcom County Planning Officials

RELATIONSHIP TO OFP:

Census data is used in determining key elements of the Federal Farm and Ranch land Protection Program (FRPP). Whatcom County raised concerns with the 2007 Census data and the impact it would have in applying for and preserving farmland.

DESCRIPTION/BACKGROUND:

At the June meeting of the Farmland Preservation Task Force, the developing issue of the 2007 Census data was briefly discussed as it related to Whatcom County. The below information is specific to their census data and the impact it will have on future FRPP grant cycles. It should be noted, that in Mid-August of 2009, Washington State NRCS received additional funds to go towards FRPP projects. Initially, NRCS was able to fund 8 projects at about \$1.5 million (not including Whatcom County). The additional funds were the result of other states not being able to spend and the fact that Washington State NRCS was ready to move on several projects. While the details on what exactly was funded are still being worked out, OFP staff was told that of the 32 original projects, the additional funds took them down to number 25 on that list, including 3 projects in Whatcom County.

The National Agricultural Statistical Service (NASS) data originally showed that Whatcom County lost 30% of its agricultural land between 2002 and 2007. The new Washington NASS director looked at their data and found a significant error for 2002. Instead of 30% the new loss was calculated at 19% over the 2002 - 2007 period. This comes out to about 4,700 acres per year over that time period. People familiar with the county and with Ag in Whatcom indicate that this is way beyond what they think is correct. In speaking with David Knopf (NASS director for Washington) he indicated that some of the assumptions and data are good statewide, but might not be very accurate on a county by county basis for some counties. Unfortunately, the scoring is done on a county basis using this data.

FRPP scoring this year included using parcel size as one of the criteria. In Whatcom County, Agriculture is very diverse and many of the early farms were fairly small dairies. Since then, some farms have consolidated and some farms have been further subdivided. Rarely are parcels combined into larger parcels, however. Most of their commercial farmers use multiple parcels for their operations. Whatcom Ag zoning is 40 acres minimum parcel size, but in reality Ag zone parcels average around 17 acres.

Whatcom also lost points because most of their applicants were not in close proximity to other protected land. They have a very large county and a fairly new PDR program. To have more protected farms in close proximity to other protected farms, they need to be able to protect more farms. To do this effectively will take as much match as they can get.

WATER: ECOLOGY WATER RESOURCE PROGRAM

ISSUE:

Reduction of budget for the Department of Ecology Water Resource Program and the impact it has on farmers.

SOURCE:

Department of Ecology Water Resource Manager

RELATIONSHIP TO OFP:

Impacts the effectiveness of processing water rights and impacts the effectiveness of drought recovery

DESCRIPTION/BACKGROUND:

Water Resource Manager Ken Slattery illustrates the impacts to the Water Resource Program from recent budget reductions and how the program will continue.

Drought

Recently Ecology convened the Water Supply Availability Committee to advise the governor on what the hot weather and dry conditions have done to water supplies across the state.

The state currently does not have the conditions that would merit a statewide drought declaration but have identified regions of concern. They currently do not have access to about a half million dollars that was originally earmarked for emergency drought relief. Money from the State Drought Preparedness Account and the State Emergency Water Projects Revolving Account helped farmers and ranchers and water suppliers get through the drought of 2005 but this year those funds are not available because of budget cuts.

That doesn't mean Ecology won't be playing a major role in drought relief if the Governor declares some regional drought emergencies, but their help will come more in the form of providing expertise and consultation for farmers drilling their dry wells deeper or for municipalities trying to expand their water storage capacity. They may be able to guide them to other financial resources, like federal assistance.

Water Rights Processing

A directed budget reduction of \$2.9 million (about 25 percent) has required Ecology to reduce water rights permitting from 56 to 44 FTEs and that means they'll be making fewer decisions on new water right applications and applications for water right changes. Current backlog is about 5,700 applications for new water rights and some 1,300 pending applications for water right changes.

This comes at a difficult time in that water rights issued for the right reasons and in the right places provide a tremendous economic stimulus for our cities and counties. Washington's 1.8 million acres of irrigated agriculture, for example, generates \$3 billion in agricultural products every year.

The Office of Columbia River was largely spared the cuts and is on track to issue permits for new water from the Columbia River for the first time in many years. The water rights budget reduction is only in effect for one biennium, so with some luck and an improving revenue outlook they look forward to maybe getting some of these FTEs and dollars back in the 2011-13 biennium.

Staffing

Water Resources is the one Ecology program that is most dependent on the state general fund (for about 85 percent of the operating budget). While state general fund revenues grew after the 1990s, staff grew as well from about 100 full time equivalent (FTE) positions to nearly 170 FTE. At the all time high water mark for staffing late last biennium, they had 167 filled and funded FTEs. Today, they have about 151 funded FTEs, roughly the same as in 1993 right before the last big staff reduction. The loss of about 16 filled staff positions (approximately a ten percent reduction) is a serious but not fatal blow to the capacity of the program.

After eliminating a number of vacant positions and moving an additional 4.5 positions to capital funding, to balance the program budget in the new biennium it still was not enough and they had to reassign staff within the program and place other staff in vacancies in other Ecology programs. These measures were still insufficient to balance their budget. Issued layoff notices to four employees.

WATER: STOCK WATER WORKING GROUP

ISSUE:

Stock Water Working Group

SOURCE:

Update on Stock Water Working Group

RELATIONSHIP TO OFP:

Many producers including dairymen and stock owners have relied on the stockwater exemption as provided for in statute. The relationship this has to preserving farmland is directly linked to the ability of producers to continue with certainty their operation. Uncertainty in the exemption potentially could lead to financing difficulties with lenders, impacts to the fringe economies of stock owners and dairymen, and potential reduction in growth of these two industries in Washington.

DESCRIPTION/BACKGROUND:

The Ground Water Code was enacted in 1945. In general, it requires a water right permit for any new withdrawal of ground water after June 6, 1945. However, in addition to "grandfathering" ground water rights in existence before its enactment, the 1945 code also exempted certain new withdrawals from this permit requirement. The code states that a permit is not required for (1) any withdrawal of public ground waters for stock watering purposes, (2) for the watering of a lawn or of a non-commercial garden not exceeding one-half acre in area, (3) for single or group domestic uses in an amount not exceeding 5,000 gallons a day, or (4) for an industrial purpose in an amount not exceeding 5,000 gallons a day. (RCW 90.44.050)

The exemption for stock watering purposes has been the subject of much attention throughout the years and has led to several efforts in the legislature to bring clarity to this issue.

In 2005, Senator Bob Morton and then Representative Janéa Holmquist (now a state senator) requested an attorney general opinion asking the following three questions:

1. Does RCW 90.44.050 restrict groundwater withdrawals without a permit, for stock-watering purposes, to 5,000 gallons per day?
2. If RCW 90.44.050 does not limit such groundwater withdrawals for stock-watering to 5,000 gallons per day, may the Department of Ecology implement rules imposing such a limit?
3. May an agency interpret and apply statutory language differently over time due to its perception of changing societal needs or the agency's evolving public policy perspective?

The Attorney General responded that RCW 90.44.050 authorizes groundwater withdrawals for stock-watering purposes without a water right permit and does not limit the amount of such withdrawals to any specific quantity. The Department of Ecology (Ecology) lacks statutory authority to require a permit as a condition to the withdrawal of groundwater for stock-watering purposes, or to categorically limit the amount of water that may be withdrawn for such purposes. In certain circumstances, statutes administered by Ecology would authorize it to affect or limit withdrawals of water for stock-watering purposes, just as they would authorize Ecology to affect or limit other exempt and nonexempt withdrawals. An administrative agency may not interpret a statute in a manner that is inconsistent with its language and legislative intent based on its belief that a different interpretation would better advance sound public policy, but may change

its interpretation based on changes in case law, new information about legislative intent in enacting the statute, or where the statute is sufficiently broad to reasonably permit a changed interpretation. (AGO 2005 #17)

In the summer of 2008, Easterday Ranches filed an application for a Conditional Use Permit (CUP) from Franklin County to construct a confined animal feeding operation (CAFO) in Eltopia Washington. Easterday Ranches proposed to build a 30,000 CAFO that would in part use the exemption in the ground water code to provide water for stock. This effort sparked an organized response which sought in part to limit the intended use within the exemption saying it was not intended for commercial animal feedlots and set a maximum gallon limit from the well.

The Department of Ecology (Ecology) has been working from the AGO that they may not limit withdraw. The matter is in an ongoing legal challenge.

One item was clear from Ecology; clarification would take a legislative action. To that end, several bills were introduced in the 2009 legislative session to bring clarity to the stock water exemption. None passed but these remain active for the upcoming 2010 legislative session.

HB 1091 would have limited the withdrawal of groundwater from an exempt well for stock-watering purposes to 5,000 gallons a day.

HB 1489 and SB 5578 Defined "stock watering" as all reasonable uses of water normally associated with the care and management of livestock including, but not limited to, drinking, feeding, cleaning of stalls, washing livestock, washing equipment used in the feeding or milking of livestock, controlling dust around livestock, and cooling livestock; Limited stock watering to 350 acre feet of water per year; Required a permit exempt well owner planning on withdrawing more than 15,000 gallons a day for stock watering purposes to submit several documents to the Department of Ecology prior to withdrawal.

HB 1509 Defined "stock watering" as all reasonable uses of water normally associated with the care and management of livestock including, but not limited to, drinking, feeding, cleaning of stalls, washing livestock, washing equipment used in the feeding or milking of livestock, controlling dust around livestock, and cooling livestock.

To continue the conversation into the interim, Ecology was directed in their budget to convene a stock watering work group. The budget item detailed the membership to include: Legislators, four members representing agricultural interests, three members representing environmental interests, the attorney general or designee, the director of the department of ecology or designee, the director of the department of agriculture or designee, and affected federally recognized tribes shall be invited to send participants.

The group is to review issues surrounding the use of permit-exempt wells for stock-watering purposes and may develop recommendations for legislative action. The working group is to meet periodically and report its activities and recommendations to the governor and the appropriate legislative committees by December 1, 2009.

The first meeting occurred on August 4, 2009 in Olympia. Prior to the meeting, members were surveyed on the top 5 issues concerning the exemption. The results of this survey are attached. Also attached is a letter from the Confederated Tribes and Bands of the Yakama Nation in response to the invitation to join the working group. In short, they declined the invitation, but will attend as observers.

During the meeting, the members selected as co-chairs, Senator Phil Rockefeller and Representative Bruce Chandler. It was agreed that the members needed a common base of knowledge from which to move forward. To that end, the September 3 meeting in Olympia will focus on presenting information such as

where the exemptions are occurring and the estimated withdrawal. Work to identify the problem is a high priority.

ISSUE FOR FARMLAND PRESERVATION:

The importance of this issue is directly tied to the viability of agriculture in our state. To use the proposed feedlot described above as an example of the economic impact which leads to the continued viability it is important to recognize the importance of this project to the overall agricultural economy of Washington.

Their presence in a region has wide ranging effects not only on local tax rolls, but industries dependent on these operations ranging but not limited to construction, truck drivers, veterinarians, cow/calf producers, feed producers, and even food processors that have a market for their by products. All of these are a part of an agricultural economy, one that remains vitally important to the bigger economy in Washington State.

It is estimated that a 30,000 head facility would have a new construction cost of roughly \$10.6 million and once established have a payroll of about \$1.6 million for over 40 employees. The connection to preserving farmland is found in where feedlots get their cattle and what they pay. For a 30,000 head operation, it is estimated that over \$45 million would be spent on purchasing cattle annually.

The path of a cow to feed lot is essentially a two part process that supports thousands of people in numerous ways. First is the cow/calf producer, many of which are located in Washington. Cow/calf producers are ranchers that manage and raise mother cows and calves also known as pairs. They then market the weaned calves to a stocker operator who purchases the calves and grazes them on pastures and rangelands until they reach a certain weight. At that time, they are sold to a feed lot.

Cow/calf producers and stocker operators face a litany of challenges with development pressures on agricultural grazing lands being among the top. The increase in cost or value of grazing lands has forced some producers out of the cattle business. Developing and fostering a healthy cattle infrastructure for these producers to market their product is critical to maintain not only their way of life, but the lands they depend on for grazing. Also dependent on a healthy cattle industry is the feed producers. These are the hay fields and landowners who lease their land to grazing. Without them, the viability of these lands is lessened and can become at risk to conversion out of agriculture.

DECEMBER 2009 UPDATE

When this brief went before the Task Force, the Stock Water group had only held initial meetings. After presentations from stakeholder interest groups, it was determined that a sub group should be formed sans legislators, to go over several topics. The sub group met to discuss these topics and there was general consensus that the group should continue to meet as it was deemed to be a good working start to address this resource need. When before the legislature for the December committee assembly, participants remarked that the work they were doing was important and should continue even with the parallel lawsuit currently making its way through the legal process. Up-to-date information can be found by going to the Stock Water Work Group web page: <http://www.ecy.wa.gov/programs/wr/hq/swwg.html>

WATER: CHANGE IN USE/TRANSFERS

ISSUE:

Change in Use water transfer decisions for irrigated water converting to continuous municipal use.

SOURCE:

Farmland Preservation Task Force Recommendations

RELATIONSHIP TO OFP:

The 2008 report to the Washington State Conservation Commission provided by the Office of Farmland Preservation included several recommendations adopted by the Farmland Preservation Task Force.

One of the report recommendations stated that a water right is the right of the holder and may be sold only for agriculture use. The Task Force recognized that a water right is a right similar to a property right which can be sold or transferred, but also recognized that water is being transferred or sold as a change of use for municipal purposes, posed an irresolvable threat to future agriculture development in this state.

If a water right is removed from a parcel via a change in use to continuous municipal, not only is the land potentially no longer able to be irrigated without filing for a new right, but removal from irrigation for municipal purposes assures that the water is lost in perpetuity for future irrigation uses.

DESCRIPTION/BACKGROUND:

Although water rights are attached to the land, a water right can be legally transferred from one piece of land to another. Money can be offered privately to encourage this transfer. Because a water right is attached to the land it can't legally be transferred for use elsewhere without informing the Department of Ecology (Ecology). Water rights can only be transferred if conditions similar to those for obtaining new water rights are met:

- The water right being transferred is a valid and legal water right;
- The water will be beneficially used;
- There is no impairment to existing water rights, including in-stream flows;
- It is not detrimental to the public interest,
- The instantaneous or annual amount of water used won't increase; and
- The water source won't change.

Instead of Ecology, a local Water Conservancy Board can process a water right transfer application and produce the required report of examination (ROE) which is then submitted to Ecology for final review. Processing through these boards can result in a much shorter turnaround time. There are 21 different water conservancy boards operating in Washington.

The 1997 Legislature (in RCW 90.80) authorized counties to establish water conservancy boards (boards) to enable the processing of water-right transfer applications at the local level. A board can serve a single watershed, multiple watersheds, a county, or multiple counties.

Once established, a board operates as a separate unit of local government. Boards process water right transfer applications and issue records of decision. All board decisions are ultimately reviewed and affirmed, reversed or modified by Ecology.

Each board consists of three or five commissioners with up to two alternates. All board commissioners and alternates must initially receive 32 hours of training from Ecology, and maintain 8 hours per year of continuing education after that.

There are currently 20 water conservancy boards operating in Washington: 16 on the east side and 4 on the west side. Three boards have websites: Chelan, Thurston and Yakima.

ISSUE FOR FARMLAND PRESERVATION:

An informal review of recent change in use applications specific to converting from irrigation to municipal use confirmed that a sizeable amount of water is being converted from historic irrigation to continuous municipal use. While most of the entities pursuing the water are counties and cities, the rest consist of requests for conversion to small water systems primarily used in residential developments.

The informal analysis reviewed 44 instances in the last few years that had a change in use from seasonal irrigation to continuous municipal. The total acre feet converted was 8,432 acre feet/year which according to the permitted acreage it could irrigate, accounted for 3,253 acres of ground.

From a strictly preservation perspective, this presents a new challenge to the face of agriculture in our state. While technology has increased efficiencies in meeting the consumptive use of crops and stock, the “saved” water can easily be sold to an entity filing for a change in use, or placed in the state water trust where it can be held in perpetuity or as was noted in one reviewed change of use application, pulled from trust to sell to the local utility to meet growing municipal demands.

Another area for concern is the practice of subdivision of land and the use of exempt wells to provide water while selling the attached irrigation right for municipal purposes.

POLICY RECOMMENDATION:

OPTION: Recommend a process similar to an Agriculture Impact Statement for change in use applications. The Task Force may choose to recommend to the Washington Department of Ecology that they modify their Staff Guidance for Administration of Chapter 173-153 WAC Water Conservancy Boards to include a section in their investigation of the perceived impact to agriculture and its impact on the local economy.

OPTION: Recommend that the Department of Ecology archive and make public on the water conservancy boards web page all change in use decisions that are approved or denied by type. As it stands now, few of the water conservancy boards have web pages. Of the boards that do carry a web page, only one has past board decisions. Adding transparency to these decisions may instigate a broader response during the open comment period and also add to the ability to gain a historic perspective on water rights over time.

WATER: UPPER KITTITAS GROUNDWATER UPDATE

ISSUE:

Upper Kittitas Groundwater Update

SOURCE:

WA Department of Ecology

RELATIONSHIP TO OFP:

Rapid development and the increase in exempt wells may impact senior water right holders whose certainty on water impacts the viability of agriculture in Kittitas County.

DESCRIPTION/BACKGROUND:

Ecology received a petition in September 2007 from water right holders in Kittitas County seeking a temporary moratorium on new ground water wells in Kittitas County. The petitioners are members of a group called Aqua Permanente who are concerned that rapid rural residential growth will impair senior water rights and stream flows in the Kittitas and Yakima valleys. Of particular concern is the proliferation of exempt wells which do not require a water right permit from Ecology. The petitioners wanted the moratorium to stop the practice of some developers who are drilling multiple exempt wells to serve multi-home subdivisions.

For the fifth time, the Department of Ecology (Ecology) has clarified its current groundwater closure in upper Kittitas County with the filing of an amended emergency groundwater rule.

The amended rule makes it clear that people with vested building permit applications or issued building permits in the upper county as of July 16, 2009, are not subject to the groundwater closure and may use permit-exempt wells.

A vested building permit application is one that has been completed and submitted to the county, and issuance of a permit is expected.

The amended rule was signed Friday, July 31, 2009, and is effective for a maximum of 120 days. Under the amended rule, metering will be required for all uses of the groundwater exemption for residential purposes.

At the urging of Gov. Chris Gregoire, Ecology and the Kittitas County Commissioners have renewed talks on a groundwater management agreement and a permanent groundwater rule that will limit the uncontrolled proliferation of wells exempt from water permits in the upper county.

During the 120 days of the amended rule, new water uses proposed by those without vested building permits will be allowed only if the proposed use of water is fully mitigated to offset impacts to senior water rights and streamflows.

Mitigation can generally be achieved by acquiring and transferring or retiring another existing water right from the same water source to offset a new use. Some existing sources of mitigation water are already available and Ecology is working with the owners of existing water rights to quickly develop a water banking system to allow access to mitigation water by new water uses.

Ecology also recommends that water users not subject to the groundwater withdrawal obtain mitigation water, which brings with it a senior priority date. Properties that have mitigation water with a senior priority will be less likely to be curtailed and as result, the value of the property will be enhanced.

Since 1998, nearly 3,000 wells have been drilled in Kittitas County, prompting concerns that groundwater pumping in the headwaters regions of the county threatens senior water users and stream flows in the Yakima Basin. A number of parties, including the citizens group Aqua Permanente, the Yakama Nation and the city of Roslyn, have asked that Ecology close the groundwater to further appropriation while a groundwater study is completed.

That study, funded by the Legislature and designed to gain a better understanding of the connection between groundwater and surface water, will commence soon.