

# Voluntary Stewardship Program

An Alternative Approach to GMA and CAOs

## BOCC Presentation

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# Agenda

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- ▶ What is the Voluntary Stewardship Program (VSP)?
  - ▶ Voluntary
- ▶ What is the relationship to the Growth Management Act?
- ▶ County Requirements -
  - ▶ Opting-in & accepting funds
  - ▶ Developing your watershed plan
    - ▶ Watershed group
    - ▶ Technical Panel
    - ▶ Statewide Advisory Committee
  - ▶ Monitoring, evaluation, and consequences

# Trends Leading to VSP

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- ▶ All counties must adopt a Critical Areas Ordinance (CAO) protecting critical areas.
- ▶ Several counties exempted agriculture from CAO, but subsequent court cases made clear that agriculture couldn't be exempt from CAO.
- ▶ Concerns in agriculture community about regulation impacting agriculture value.
- ▶ Environmental concerns of agriculture impact to critical areas – both ongoing and future agriculture.
- ▶ Counties concerned re: costs of appeals.

# VSP Early History

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

# Purposes of VSP (RCW 36.70A.700)

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

# Purposes of VSP (RCW 36.70A.700)

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- ▶ **Leverage existing resources** by relying upon existing work and plans in counties and local watersheds, as well as existing state and federal programs to the maximum extent practicable to achieve program goals;
- ▶ Encourage and foster a spirit of **cooperation and partnership** among county, tribal, environmental, and agricultural interests to better assure the program success;
- ▶ **Improve compliance** with other laws designed to protect water quality and fish habitat; and
- ▶ Rely upon **voluntary stewardship practices as the primary method** of protecting critical areas and not require the cessation of agricultural activities.

# Relationship to GMA

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- ▶ Legislation creating VSP added new sections to GMA statute, codified at RCW 36.70A.700-760.
- ▶ VSP is an alternative approach to protecting critical areas in areas used for agricultural activities.
- ▶ VSP is created in the Conservation Commission.
- ▶ VSP focus on agricultural activities rather than ag land designations. Ag activities are defined in Shoreline Management Act ([RCW 90.58.065](#)).

# What are the Five Critical Areas VSP seeks to Protect?

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1. Wetlands
2. Areas with a critical recharging effect on aquifers used for potable water
3. Fish and wildlife habitat conservation areas
4. Frequently flooded areas
5. Geologically hazardous areas



# VSP Overview

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

# Opting-in

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



# County Responsibilities

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- ▶ Within 60 days of funds being available to a county to implement the program, the county must:
  - ▶ Designate an entity to administer funds.
    - ▶ County may designate itself, a tribe, or another entity to coordinate the watershed group.
  - ▶ Designate a watershed group.
    - ▶ Must confer with tribes and stakeholders before designating the watershed group.
  - ▶ Must acknowledge receipt of funds.
    - ▶ Signing contract with the Commission – triggers timeline for completion of a watershed plan.

# Contracting with the Commission

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

# Staffing Options for VSP

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

# Watershed Group Designation

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- ▶ The County must:
  - ▶ Confer with tribes and interested stakeholders before designating or establishing a watershed group.
  - ▶ The watershed group must include broad representation of key watershed stakeholders and, at a minimum, representatives of agricultural and environmental groups and tribes that agree to participate.
  - ▶ The county should encourage existing lead entities, watershed planning units, or other integrating organizations to serve as the watershed group.

# VSP Development & State Agency Staff

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



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- ▶ The watershed group must develop a watershed plan to protect critical areas while maintaining the viability of agriculture in the watershed.
    - ▶ The watershed group will remain established for the duration of VSP.
    - ▶ The watershed group will oversee implementation and must periodically evaluate (programmatic, economic, and resource) and report on the VSP.
    - ▶ The watershed group must adaptively manage implementation if not meeting goals and benchmarks.

# Watershed Plan Timeline

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

# How to Start

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

# Watershed Plan Elements

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- ▶ Review and incorporate applicable water quality, watershed management, farmland protection, and species recovery **data and plans**;
- ▶ **Seek input** from tribes, agencies, and stakeholders;
- ▶ Develop **goals** for participation by agricultural operators necessary to meet the protection and enhancement **benchmarks** of the watershed plan;
- ▶ Ensure **outreach and technical assistance** is provided to agricultural operators in the watershed;

# Watershed Plan Elements

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- ▶ Create **measurable benchmarks** that, within 10 years after receipt of funding, are designed to result in the protection and enhancement of critical areas functions and values through voluntary, incentive-based measures;
- ▶ Designate the **entity** that will provide technical assistance;
- ▶ Work with the entity providing technical assistance to ensure **individual stewardship plans contribute** to the goals and benchmarks of the watershed plan;

# Watershed Plan Elements

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- ▶ **Incorporate** into the watershed plan existing development regulations relied upon to achieve the goals and benchmarks for protection;
- ▶ Establish baseline **monitoring** for:
  - ▶ Participation and implementation of the voluntary stewardship plans and projects;
  - ▶ Stewardship activities; and
  - ▶ The effects on critical areas and agriculture relevant to the protection and enhancement benchmarks developed for the watershed;
- ▶ Conduct periodic **evaluations**, institute **adaptive management**, and provide a **written report** of the status of plans and accomplishments to the county and the Commission within 60 days after the end of each biennium;
- ▶ **Assist** state agencies in their monitoring programs; and
- ▶ Satisfy any **other** reporting requirements of the program.

# Watershed Plan Approval

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

# VSP Technical Panel

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- ▶ "Technical panel" means the directors or director designees of the following agencies:
  - ▶ Washington Department of Fish & Wildlife
  - ▶ Washington Department of Agriculture
  - ▶ Washington Department of Ecology
  - ▶ Conservation Commission
- ▶ The Technical Panel is to review the watershed plan and assess whether the plan, in conjunction with other plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.
  - ▶ If the Technical Panel determines the plan will accomplish its goals, the Commission director must approve the plan.
  - ▶ If the Technical Panel determines the plan will not accomplish its goals, the Commission director must advise the watershed group the reasons for the disapproval.



# SEPA Process

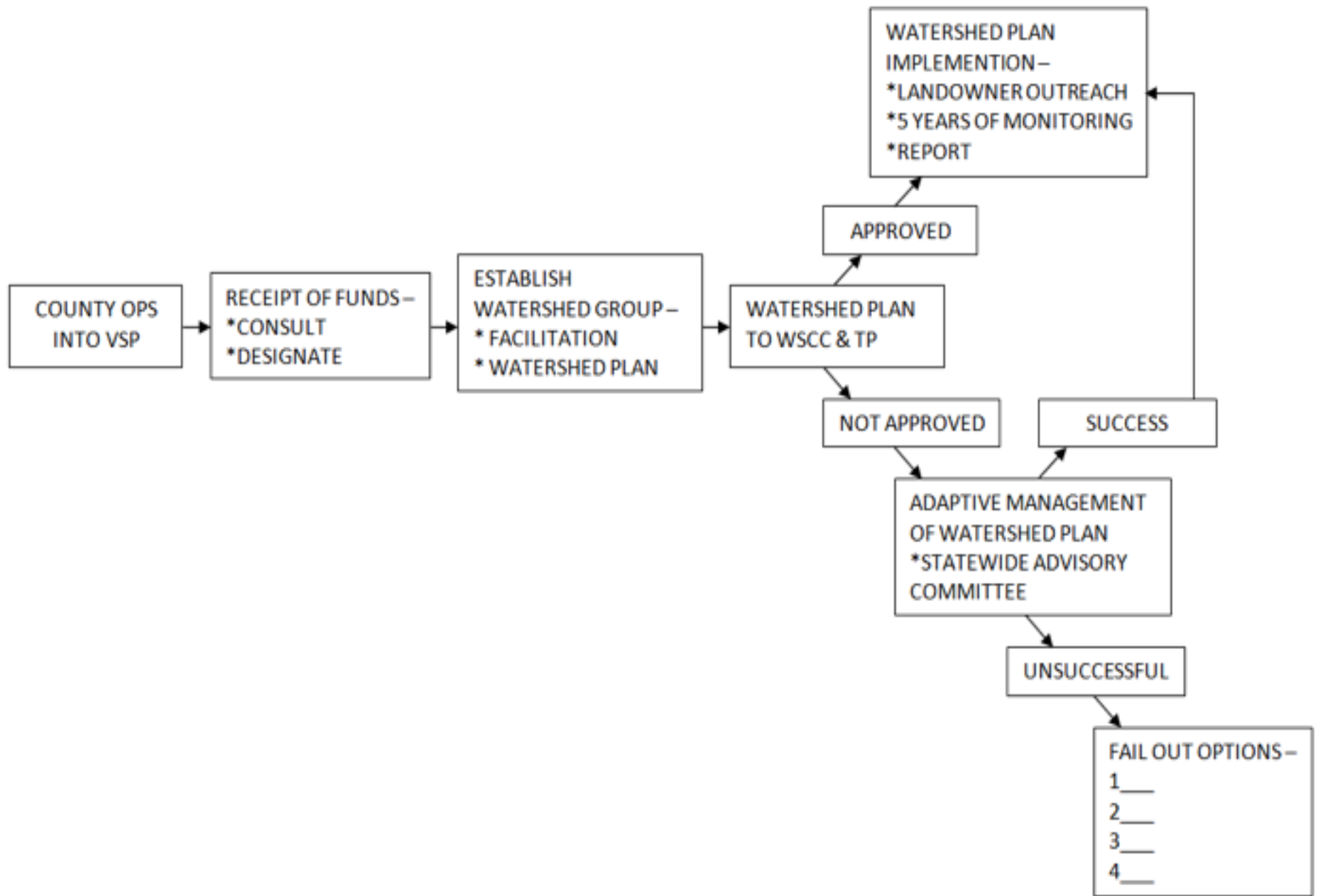
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- ▶ Approval of the watershed plan is an “action” as defined in the State Environmental Policy Act (SEPA) rules.
- ▶ Since the action of approving is at the Commission, the Commission will be the lead agency for SEPA.
  - ▶ Commission staff is looking into a programmatic SEPA process.

# Statewide Advisory Committee

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- ▶ The Commission Director is required to appoint and, in certain circumstances, consult with a Statewide Advisory Committee consisting of two persons representing:
  - ▶ County government.
  - ▶ Agricultural organizations.
  - ▶ Environmental organizations.
- ▶ The Commission, in conjunction with the Governor's Office, shall also invite participation by two representatives of tribal governments.



# VSP & Existing Regulatory Programs

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

# Watershed Plan Implementation

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

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- ▶ If the watershed group determines that additional or different practices are needed to achieve the watershed plan's goals and benchmarks, the agricultural operator
  - ▶ May not be required to implement those practices but may choose to.
  - ▶ An agricultural operator participating in the program may withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract.
- ▶ The watershed group must account for any loss of protection resulting from withdrawals when establishing goals and benchmarks for protection and a watershed plan.

# Watershed Plan Implementation

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- ▶ Various incentive programs are available to be identified in the landowner stewardship plan (examples below):
  - ▶ CREP – Conservation Reserve Enhancement Program.
  - ▶ EQIP – Environmental Quality Incentive Program.
  - ▶ CSP – Conservation Stewardship Program.
  - ▶ ACEP – Agricultural Conservation Easement Program.
  - ▶ Conservation District Programs – Funded through Commission funding and other fund sources such as ECY water quality grants and local assessment funds.

# Progress on Plan Implementation

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- ▶ **Goals are programmatic and resource oriented:**
  - ▶ Programmatic Goals – Those measuring progress on implementation of the watershed plan.
    - ▶ Include landowner participation and stewardship plan implementation.
  - ▶ Natural Resource Goals – Are the identified critical areas being protected.
  - ▶ Economic Resource Goals – Is the viability of Ag being protected and enhanced.



# Progress on Plan Implementation

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- ▶ Not later than five years after the receipt of funding, the watershed group must report to the Commission and the county on whether it has met the watershed plan's protection and enhancement goals and benchmarks.
- ▶ If the goals are being met – the watershed group continues to implement the watershed plan.
- ▶ If the goals and benchmarks are not being met - the watershed group must submit to the Commission an **adaptive management plan**.

# Adaptive Management

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- ▶ If the watershed group determines that additional or different practices are needed to achieve the watershed plan's goals and benchmarks, the agricultural operator -
  - ▶ Implementing an individual stewardship plan are presumed to be working toward the protection and enhancement of critical areas.
  - ▶ May not be required to implement those practices but may choose to.
  - ▶ May withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract.

# Adaptive Management

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- ▶ The watershed group will need to examine the character and extent of the failure to meet the program goals and look to the remaining landowners to achieve the objective.
- ▶ The watershed group may seek to “sweeten the pot” by adding additional incentives to landowners with existing plans to expand or enhance protections.
  - ▶ Landowner still gets to choose to implement.

# VSP v. GMA

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- ▶ “Traditional GMA” approach – must be able to demonstrate protection of critical areas at the parcel scale.
  - ▶ Demonstration typically done through regulatory buffers combined with enforcement program.
  - ▶ Efforts to use landowner plans have been questioned because of challenges related to being able to demonstrate protections are met.
- ▶ VSP approach – relies on evaluation at a watershed scale. Demonstrate progress on watershed plan goals every 5 years.
  - ▶ Focus is on critical area function rather than per parcel.

# VSP v. GMA

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- ▶ VSP approach – Requires reporting to the Commission on progress for achieving the goals of protection of critical areas, with protection and enhancement of viability of agriculture.
  - ▶ State agency (Commission) evaluation of progress and may disagree with watershed group.
  - ▶ Watershed group, and thus the county, may be kicked out of VSP if not achieving or adaptively management to get to goals.

# Failure of the Watershed Plan

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- ▶ **Opt-out:** Not accept funds; or after accepting funds, 3, 5, 8 or any time after 10 years.
- ▶ **Fail-out:** When the goals and benchmarks of the watershed plan are not being met and the watershed group fails to adaptively management to get back on track.
- ▶ **Insufficient Funding:**
  - ▶ The Commission has determined that the county, department, Commission, or Departments of Agriculture, Ecology, or Fish & Wildlife have not received adequate funding to implement a program in the watershed; or
  - ▶ The Commission has determined that the watershed has not received adequate funding to implement the program.

# How a Fail-Out Occurs

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- ▶ Director of the Commission concludes -
  - ▶ Failure to meet goals and
  - ▶ Failure to develop adaptive management plan.
- ▶ Work with the stakeholder group. If after six months no progress on improvements, county and watershed group are notified the watershed plan has failed.
- ▶ After notification, county has 18 months to take action.
- ▶ NOTE: Shift in roles and responsibilities from watershed group to the county.

# Opt-Out, Fail-Out, Insufficient Funding

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- ▶ County has 18 months to do one of the following:
- ▶ A. Develop, adopt, and implement a watershed plan approved by Commerce.
  - ▶ Commerce shall consult with the state departments of Agriculture, Ecology, and Fish and Wildlife, and the Conservation Commission, and other relevant state agencies.
  - ▶ The appeal of the Commerce decision under this subsection is subject to appeal under the Growth Management Hearings Board provisions;
  - ▶ WAC Chapter 365-191.



# Opt-Out, Fail-Out, Insufficient Funding

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- ▶ County has 18 months to do one of the following:
- ▶ B. Adopt development regulations previously adopted by another local government.
  - ▶ The regulations adopted must be from a region with similar agricultural activities, geography, and geology and
  - ▶ Must be from Clallam, Clark, King, or Whatcom counties; or
  - ▶ Have been upheld by a growth management hearings board or court after July 1, 2011.

# Opt-Out, Fail-Out, Insufficient Funding

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- ▶ County has 18 months to do one of the following:
- ▶ C. Adopt development regulations certified by Commerce.
  - ▶ The county may submit existing or amended regulations for certification.
  - ▶ Commerce must make its decision within ninety days after the county submits its request.
  - ▶ If Commerce denies the certification, the county shall take an action under (a), (b), or (d) of this subsection.
  - ▶ Commerce must consult with the departments of Agriculture, Ecology, and Fish and Wildlife, and the Commission
  - ▶ The appeal of the Commerce decision is subject to appeal under the Growth Management Hearings Board provisions; or
  - ▶ WAC Chapter 365-191.

# Opt-Out, Fail-Out, Insufficient Funding

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- ▶ County has 18 months to do one of the following:
- ▶ D. Review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they relate to agricultural activities.

# Appeals of VSP Decisions

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- ▶ Key principle in VSP is the desire of the counties to address the burden of appeals of county GMA decisions.
- ▶ VSP legislation accomplishes this by shifting the decision points for appeal from the county to the Commission.
  - ▶ This is done by function of the point at which a final decision is made on the watershed group watershed plan.
  - ▶ At no point is the watershed plan approved by the county legislative authority or by the watershed group itself.
  - ▶ The development of the watershed plan by the watershed group is an activity delegated to the watershed group by the county.
  - ▶ The watershed group submits the plan to the Director and he approves or disapproves of the plan.

# Commission Review of VSP

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- ▶ Review and evaluate the program's success and effectiveness and make appropriate changes to policies and procedures for implementing the program, in consultation with the statewide advisory committee and other affected agencies.
- ▶ Report to the legislature on the general status of program implementation;
- ▶ Conduct a review of the program, in conjunction with the statewide advisory committee, beginning in 2017 and every five years thereafter, and report its findings to the legislature by December 1st; and
- ▶ Report to the appropriate committees of the legislature as required.

# VSP Implementation

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

# Pilot Projects

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

# Questions?

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