



STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT

Questions and Answers on SSB 5248 (Preserving the viability of agricultural lands)

August 2007

“The Legislature finds that the goal of preserving Washington's agricultural lands is shared by citizens throughout the state. The Legislature recognizes that efforts to achieve a balance between the productive use of these resource lands and associated regulatory requirements have proven difficult, but that good faith efforts to seek solutions have yielded successes. The legislature believes that this willingness to find and pursue common ground will enable Washingtonians to enjoy the benefits of a successful agricultural economy and a healthy environment, while also preventing the unnecessary conversion of valuable agricultural lands. The Legislature, therefore, intends this act, the temporary delays it establishes for amending or adopting provisions of certain critical area ordinances, and the duties and requirements it prescribes for the William D. Ruckelshaus Center, to be expressions of progress in resolving, harmonizing, and advancing commonly held environmental protection and agricultural viability goals.”

– SSB 5248, Sec. 1(1) and (2)

Summary

The 2007 Legislature passed SSB 5248 relating to preserving the viability of agricultural lands. The law amends the Growth Management Act (GMA) and creates several sections that are effective from May 8, 2007, through December 1, 2011. The amendment directs the Ruckelshaus Center, a neutral forum for collaborative problem solving that combines resources from the University of Washington and Washington State University, to examine conflicts between agricultural activities and critical area ordinances (CAOs) adopted under GMA. The amendment creates a temporary delay, or “time-out,” on new CAO provisions affecting agricultural activities, while the Ruckelshaus Center develops recommendations. This technical assistance document is directed primarily at local governments that may have questions about how the amendment affects their obligations under the GMA.

Ruckelshaus Center duties

The Legislature directed the Ruckelshaus Center to examine conflicts between agricultural activities and critical area ordinances adopted under GMA and develop recommendations in two phases, with a series of reports due over a three-year period:

- **Fact-finding and stakeholder outreach** to identify existing information related to agricultural activities and critical areas including scientific information, regulatory programs (such as CAOs, salmon recovery plans and water quality requirements), and incentive programs (such as the conservation reserve enhancement program). The center will identify stakeholder concerns, desired outcomes, opportunities, and barriers to resolving issues. The center will prepare reports on their efforts by December 1, 2007, and December 1, 2008.¹

¹ SSB 5248, Sec. 3(3)(a).

- **Developing recommendations**, including policy and financial options or opportunities to achieve the desired outcomes identified in the fact-finding phase. The amendment asks that stakeholders examine innovative solutions including outcome-based approaches that incorporate voluntary programs, and ways to modify state law to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary approaches. The amendment anticipates a coalition that will support statutory changes for new approaches to protecting critical areas during the 2010 legislative session. A final report of findings and legislative recommendations is due to the Governor and the Legislature by September 1, 2009.²

Three-year time-out on new or amended CAO provisions for agriculture

From May 1, 2007, through July 1, 2010, the Legislature declared a temporary delay, or “time-out” during which “counties and cities may not amend or adopt critical area ordinances under [GMA] as they specifically apply to agricultural activities.”³

The legislation defines “agricultural activities” broadly to include “agricultural uses and practices currently existing *or legally allowed...*”⁴ This means the time-out on new critical area ordinance provisions applies to both existing activities and new activities that are not prohibited under current codes. The time-out applies not just to agricultural activities on designated agricultural resource lands,⁵ but on all rural lands (essentially all lands outside urban growth areas).

“Agricultural activities” include, but is not limited to:

“Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.”⁶

The SSB 5248 primarily affects counties but also those few cities that have designated agricultural lands of long-term commercial significance.

What happens at the end of the time-out?

After July 1, 2010, jurisdictions subject to the time-out are required to “review and, if necessary, revise critical area ordinances as they specifically apply to agricultural activities to comply with the requirements of [GMA] by December 1, 2011.”⁷ The requirements of GMA relating to agricultural activities will be unknown until the end of the 2010 legislative session.

² SSB 5248, Sec. 3(3)(b) and (4).

³ SSB 5248, Sec. 2(1).

⁴ SSB 5248, Sec. 2(3). Emphasis added.

⁵ i.e., designated agricultural lands of long-term commercial significance under GMA, RCW 36.70A.170.

⁶ SSB 5248, Sec. 2(3).

⁷ SSB 5248, Sec. 2(2)(b).

What if the center's efforts do not lead to consensus recommendations?

SSB 5248 sets an optimistic tone and expresses confidence in the success of the Ruckelshaus Center process, but also establishes a fall-back position. If by the end of the time-out period (July 1, 2010) “the efforts of the center do not result in agreement on how to best address the conflicts between agricultural activities and certain regulatory requirements as they apply to agricultural activities, the Legislature intends ... to require jurisdictions that have delayed amending or adopting certain regulatory measures to promptly complete all regulatory amendments or adoptions necessary to comply with [GMA].”⁸ Unless the statute is otherwise amended, those local governments would have until December 1, 2011, to adopt critical area ordinance provisions related to agricultural activities.⁹

Do local governments still need to update CAOs under the GMA?

Yes. Cities and counties must still comply with all GMA update requirements,¹⁰ including all CAO requirements that are *not* associated with agricultural activities. Nothing in the bill “limits or otherwise modifies the obligations of a county or city to comply with the requirements of [GMA] pertaining to critical areas not associated with agricultural activities.”¹¹

Do existing CAO provisions regarding agricultural activities apply during the time-out?

Yes. The amendment states that it does not nullify CAOs adopted before May 2007,¹² nor is it intended to “reduce or otherwise diminish existing critical area ordinances that apply to agricultural activities during the deferral period.”¹³

If a local government has adopted a CAO prior to May 2007 that affects agricultural activities, but is still working on building administrative programs or procedures to implement it, this work should continue.

During the time-out period, if a *new* CAO is adopted, the provisions of a previous CAO that apply to development associated with agricultural activities must be maintained. In these cases, local governments may have two CAO versions on the books during the remaining time-out period – one for agricultural activities and one for all other activities. If this is the case, make sure permit staff are trained on both. When an application comes in, first make a determination as to whether it meets the definition of agricultural activities under SSB 5248. If it does, apply the “old” CAO provisions. If it does not, apply the new CAO. If a development proposal contains some components that are agricultural activities, and some that are not, apply the appropriate provisions to each activity.

May local governments use voluntary programs during the timeout?

Yes. SSB 5248 encourages local governments that are subject to the time-out to employ voluntary programs to enhance public resources and the viability of agriculture. The amendment stipulates that any voluntary programs must include measures to evaluate the successes of these programs.¹⁴

⁸ SSB 5248, Sec. 1(3).

⁹ SSB 5248, Sec. 2(2)(b).

¹⁰ RCW 36.70A.130(4).

¹¹ SSB 5248, Sec. 2(1)(b).

¹² SSB 5248, Sec 2(1)(a).

¹³ SSB 5248, Sec. 1(4).

¹⁴ SSB 5248, Sec. 2(1)(c) and (2)(a).

How can interested parties participate in the Ruckelshaus Center process?

The center is required to consult with local governments, agricultural, environmental and tribal interests. The center is establishing a stakeholder process as required by the legislation. Legislators and legislative staff, as well as staff from the Governor's Office representing executive branch agencies, will also be involved throughout the process. Presently representing local governments in the process is Eric Johnson of the Washington Association of Counties. During the time out, the center will contact potentially interested and affected parties and expects to hold meetings at a number of locations around the state to gain additional input. The center will post updates on its web site at ruckelshauscenter.wsu.edu starting in the fall of 2007. Contact the center by phone (206) 543-7958, or e-mail RuckelshausCenter@wsu.edu.

What about hearings board orders related to agricultural activities?

Several local governments have outstanding Growth Management Hearings Board (board) orders related to agricultural activities. If a city or county believes SSB 5248 prohibits taking actions necessary to comply with a board order, consider requesting the board to issue an order that stays or modifies its compliance order. Consider filing a statement of actions to comply and schedule a compliance hearing, including an explanation of how the legislation prevents compliance with the Board order in whole or in part. If a board or court issues a stay, The Washington State Department of Community, Trade and Economic Development does not report that a city or county is out of compliance with the GMA for the purposes of state grant or loan applications.¹⁵

Does SSB 5248 affect other laws or rules that impact agricultural activities?

No. SSB 5248 only changes local government authority and responsibilities for *critical areas* under the GMA. It does not affect other GMA responsibilities, such as designating and protecting agricultural resource lands. It does not affect responsibilities and options under other state, federal, or local laws or rules.

What about shoreline master programs developed during the time-out?

Local Shoreline Master Program (SMP) update deadlines established by the Shoreline Management Act (SMA) still apply.¹⁶ Under a bill passed in 2003, when the state Department of Ecology adopts a new SMP, regulatory control over critical areas that are within shoreline jurisdiction "transfers" solely to the SMP.¹⁷ The SMA prevents new SMPs from requiring "modification of or limiting agricultural activities occurring on agricultural lands," so new SMPs must not regulate existing agricultural activities, consistent with the time-out provisions of SSB 5248.

For more information

To reach the Ruckelshaus Center, e-mail RuckelshausCenter@u.washington.edu. For information on growth management related questions, contact Leonard Bauer, at (360) 725-3055.

¹⁵ See *Swinomish Indian Tribal Community, et al. v. Skagit County Order Granting Stay*, WWGMHB No. 02-2-0012c, July 9, 2007.

¹⁶ RCW 90.58.080.

¹⁷ ESHB 1933. See *Questions and Answers on ESHB 1933: Critical Area Protection under the GMA and SMA* (Ecology/CTED, 2003).