

Options and Issues for Protecting Agricultural Lands in Klickitat County

Prepared to help stimulate discussion for
Klickitat County Farmland Protection Process meetings:
October 21, 22, and 23, 2008
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Introduction: The land input for agricultural businesses:

The success of any business turns upon its ability to assemble the inputs required for profitable operation. For agriculture,* these might include land, capital, labor, water, energy, innovation, marketing, management, etc. (See Appendices A & B) Land, in particular, often emerges as a critical issue – as a core necessity for agriculture and an especially costly one. Land is usually at the heart of a farming operation so it takes on special importance for most farmers. And, since continued use of land in agriculture is hugely important for the broader community, non-farmers also have an interest in the continued success of agricultural businesses. (See Appendix C – Why Save Farmland?)

To have value as a farm business input– the land must be useful for the particular agricultural operation in several ways:

- **Affordability**: It must be available at a price that can be afforded the farm enterprise.
- **Productivity**: It must possess soil, climate, and other conditions that will make it productive.
- **Location and contiguity**: It must be appropriately located for the particular farm and, in some cases, located near or adjacent to particular public or other private agricultural lands to minimize conflicts with neighbors or to facilitate management between parcels.
- **Size**: It must be of a size appropriate to and useful for the intended use.
- **Zoning**: It must be zoned appropriately and hopefully protected by right-to-farm laws.
- **Sustainability**: Its productivity must be sustainable with management at a reasonable cost and without undue restrictions on its use.
- **Timing**: It must be available at a time when the farmer has the desire and the capacity to buy.

Of course land is but one among many requirements for a farm business. But having the right land is critical. And with increased competition from other, more land-intensive uses, the land base can become fragmented and the right land can move out of reach for most farmers.

If agricultural lands are to continue to be available for farm and ranch businesses, we will need to understand and employ as many as possible of the options for protecting them as possible. (See Appendix D – The Farmland Protection Toolbox.) The items that follow explain each of several approaches currently in use to support the availability of key farmland for agriculture – particularly here in Washington. Of course everything having to do with farms, in one way or another, affects farmland. The focus here is generally limited to those approaches and programs that are, more-or-less directly, focused on helping assure the long term availability of land for the agriculture industry.

* Forestry issues can also be a part of this discussion – the issues associated with forest lands are quite similar to those associated with agriculture.

Summary of Options

- A. Regulatory zoning** **Pg. 4**
Regulatory zoning prevents the further fragmentation of important agricultural lands. It also tends, to some degree, to dissuade non-agricultural buyers who do not wish to own, or cannot afford to buy, larger parcels of land.
- B. Purchase of development rights** **Pg. 6**
A purchase of development rights (or PDR) is a voluntary transaction in which a landowner is paid a negotiated market price in exchange for placing an easement restriction on his or her land that will prevent its subdivision or development in ways inconsistent with agriculture.
- C. Transfer of development rights** **Pg. 8**
Transfer of development rights (TDR) programs allow landowners to sell their rights to residential development at a fair market price to another party, usually a developer, who transfers those rights to a more urban location and is allowed to use them to increase residential density there.
- D. Donated agricultural conservation easements** **Pg. 10**
A donated agricultural easement works like a purchased one – a restriction is placed on the title to the land, usually in perpetuity. It can prevent those future uses that the landowner believes should be restricted. The donation is charitable for tax purposes and is generally made to a land trust.
- E. Right to Farm laws** **Pg. 11**
A right to farm law provides some limited immunity to farm landowners from nuisance lawsuits brought by neighbors complaining about the side effects of active agriculture such as noise, odor, dust, long working hours, etc.
- F. Market demand and economic development** **Pg. 12**
One way to assure agricultural lands are preserved is to strengthen the agricultural business. In particular, a marketing program that builds consumer support for local farm products can help enhance the profitability of the local farms that produce them. Community-level economic development strategic planning for agriculture is another way to support local farm businesses.
- G. Limiting taxes - current use taxation** **Pg. 15**
Current use taxation recognizes that a viable farm business can only afford to pay property taxes on land at a level commensurate with its productivity for agriculture. Under a current use tax system, farmers and ranchers are required to pay property taxes based on the agricultural value of their land, not on its fair market value. Other tax breaks for agriculture can also be provided.
- H. Supporting environmental sustainability** **Pg. 16**
Strong, readily available conservation cost share and technical assistance programs can help farmers deal with environmental costs, reduce their regulatory pressure, improve their profitability, and potentially provide an added source of farm revenue.
- I. Assisting with farm transition** **Pg. 21**
Farm transition programs help farmers deal with the complications of transitioning ownership/operation of a farm to a new owner. They provide education, legal, accounting, counseling, and other resources, and they can keep listings of farms available for sale and of people

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interested in beginning in farming to help make early connections between retiring farmers and those who wish to take over their operation.

J. Credit to buy farmland Pg. 22

Agricultural credit programs, through institutions like Farm Credit Services, seek to provide a dependable source of credit, from lenders who are expert in the complications of agricultural businesses, and at a reasonable cost using federally assured credit markets.

K. Reducing the impacts of government action Pg. 23

Government impacts on agriculture through condemnation, land transactions, environmental restoration, regulations, or other government actions can also affect the preservation of agriculture and of agricultural lands. Farmland Protection Policy Acts can establish government policies that minimize these impacts, require thoughtful criteria before allowing them, and establish processes and public input before such actions are taken.

L. Access to public lands Pg. 24

The success of some of agriculture, the cattle industry in particular, depends heavily on access to public lands. Easement programs, land use laws, agricultural districts, and the other agriculture lands protection mechanisms discussed here can at times be applied in ways that target properties or activities that protect and assure that access.

M. Agricultural districts Pg. 25

Agricultural protection district programs provide voluntary incentives to motivate adjacent farm landowners to join together in protecting significant areas of contiguous land for agriculture. In exchange for their participation, landowners may receive special protections, land use or other accommodations, and access to programs offered to encourage and support agriculture.

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A. Regulatory zoning

Washington's regulatory zoning under the Growth Management Act preserves land for agriculture by prohibiting subdivision to parcel sizes smaller than would be useful for agriculture. This prevents the further fragmentation of important agricultural lands. It also tends, to some degree, to dissuade non-agricultural buyers who do not wish to own, or cannot afford to buy, larger parcels of land. Targeting agricultural zoning to specific areas of important agricultural lands is one of the few techniques for protecting farmland that can directly help to assure the availability of large contiguous areas of land dedicated to agriculture. There are other means that can protect individual parcels – perhaps sizable ones. Zoning in Washington does not, however, require that farm-zoned lands be used for farming. (See Appendix L – Agricultural Protection Zoning.)

Klickitat County is required, under GMA, to identify important agricultural lands. But it is not necessarily required to protect them, although that is optional if the county desires to do so. GMA does encourage the use of innovative land use management techniques like density bonuses, cluster housing, and transfer of development rights. (See below.)

Beyond, and in addition to, simply requiring a large minimum lot sizes in substantial, contiguous areas of agriculture, there are other zoning tools that can also be useful in preserving agriculture. For example:

- Density bonuses: Density bonuses allow developers to build more units than would normally be allowed in a zoning district in exchange for preserving and enhancing designated resources or providing other public benefits. For example, a developer might be allowed to exceed density requirements in one location (perhaps one that is already somewhat developed) in exchange for protecting an area for large-parcel agriculture nearby or in another location.
- Cluster zoning: This is a type of zoning in which density is determined for an entire area, rather than on a lot-by-lot basis. Within the cluster zone, the developer can have greater flexibility in designing and placing structures so long as the overall density requirement is met. For example, a developer might be allowed to develop a 200 acre parcel zoned 1-20, but do so by clustering the 10 home sites on 10 adjacent two-acre lots, leaving the remaining 180 acres protected for potential agriculture.
- Transfer of development rights: This is a technique that allows developers to build to higher than currently allowed density in designated urban “receiving areas” if they purchase and retire “development rights” in designated agricultural “sending areas.” (See details in section C, below)

For example, Klickitat County residents Monte Pearson, Robert Schmid, and Hans Wintelich of the Trout Lake Sub-Area Plan Committee have proposed cluster zoning to allow development of clustered non-farm lots of 1-2 acres on “parent” parcels of at least 40 acres while preserving at least 90% of the farmable area or 75% of the total area for a larger, agricultural parcel. Current overall densities of 1 residence per 20 acres would be maintained. Thus, for example, a farmer owning 40 acres could, if desired, develop a 2-acre non-farm home site situated to minimize interference with farming and on that part of the land least suitable for agriculture. The other 38 acres would be retained for a farm dwelling and for agriculture. Or the owner of 200 acres might develop 9 one-acre non-farm parcels. The remaining 191 acres could include the farm dwelling. In these examples, the larger farm parcels would be preserved by covenant from further subdivision.

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Issues and limitations:

- Financial impact on existing landowners: When zoning changes, existing landowners can be financially affected, sometimes gaining a financial windfall (e.g. with increased density), and sometimes suffering a financial loss (e.g. if allowed density is reduced). These gains or losses can be substantial. They can easily seem unfairly generous or punitive for landowners who own the property at the time of the change. Subsequent owners, of course, presumably purchase the land knowing of its current zoning.
- Lack of certainty: For zoning to successfully keep land prices in an agricultural zone at a level that will be affordable for the farmers who might wish to own it, that zoning must be seen by everyone as stable and certain over time. If buyers can anticipate that zoning density may increase, or if they can potentially influence future zoning, speculation will drive the price up and can erode the effectiveness of the zone in accomplishing its purpose. There can often be political pressure to increase zoning density.
- Political resistance: Because of the impacts on current landowners, zoning restrictions are politically difficult to impose and are often less aggressive than they need to be to accomplish the designated purpose. The average farm in Washington is 458 acres. But the largest parcel sizes zoned for agriculture in Washington are mostly in the range of 35-40 acres. There is a good deal of agricultural zoning at 20 (e.g. in Klickitat County), 15, 10, and even 5 acre parcels. Even in the agricultural zones, many of the parcels are grandfathered in at much smaller sizes. And a good deal of the roughly 15.1 million acres currently in agriculture in this state is actually being conducted in “rural” or other non-agricultural zones.
- No requirement to farm: Because zoning can have such direct impact on landowners, Washington has not required (like Oregon) that a parcel in an agricultural zone be farmed for a residence to be built upon it. To do so would place even further financial burdens on the owner – something the political community has been reticent to do. As a result, large farm parcels can still be used as so-called “country estates.” Often, residential buyers can easily afford to out-bid a farmer for the land even if the parcel size is larger than they particularly need.

Current programs:

- Washington has a statewide Growth Management Act (GMA), RCW Ch. 36.70A. Implementation of the GMA is the responsibility of participating local governments (Klickitat County partially plans under the GMA) guided by regional Growth Management Hearings Boards which provide administrative court interpretation of the requirements of State law. The Washington Department of Community, Trade, and Economic Development [Local Government Division, Growth Management Services <http://www.cted.wa.gov/site/375/default.aspx>.] facilitates implementation of the Act and provides support and guidelines for local communities in fulfilling its requirements. **Contact:** Leonard Bauer, Managing Director, Growth Management Services, (360) 725-3055, leonardb@cted.wa.gov.
- Klickitat County Planning: Klickitat County is one of the Counties that has opted out of certain requirements in the State’s Growth Management Act, but it still does do partial planning and has adopted certain land use rules for the protection of agriculture (<http://www.klickitatcounty.org/planning>). **Contact:** Curt Dreyer: Director, Klickitat County Planning Department, Annex I, 228 W Main, MS-CH-17, Goldendale, WA 98620, (800) 765-7239, (509) 773-5703, planning@co.klickitat.wa.

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B. Purchase of development rights

A purchase of development rights (or PDR) is a voluntary transaction in which a farmer/seller is paid a negotiated market price in exchange for placing a restriction on his or her land. This restriction usually takes the form of an “agricultural conservation easement” that will prevent future subdivision and development. The easement can be written to apply to whatever portion of the land is mutually desired and can contain whatever restrictions are agreed upon. The market value paid for the easement-restriction is the difference between the full fair market value of the land and its value subject to the restriction. The seller remains the owner in fee simple. But following the transaction, the land can no longer be subdivided or developed in ways inconsistent with agriculture. So when it next sells, it will sell at a reduced price – usually a price that reflects its value for agriculture. The owner, of course, receives full payment for the reduced value which can be invested as he or she sees fit – for example, in additional land, in the business, in a retirement plan, etc. Payment for the easement can be made in cash, or can be deferred over time.

PDR programs are generally established by governments and funded through taxes (although see TDR, below). Interested farmers are invited to apply to the program. Usually there are criteria for participation that may give priority for certain soils, locations, circumstances, or characteristics of the land or farm. Because the seller of an easement remains the fee simple owner, these programs keep land in private ownership. If the owner is already enrolled in Washington’s current use tax program, the assessed value will generally stay the same with no change in property taxes. (See generally: Appendix F – Agricultural Conservation Easements, and Appendix G – Purchase of Agricultural Conservation Easements.)

Issues and limitations:

- **Property rights:** Participation in PDR programs is voluntary, and landowners receive payment for the impact on the value of their land.
- **Cost:** PDR programs can be expensive. This is why most such programs are usually targeted on the lands which seem most important to protect.
- **Funding:** Because funding may be limited, it can be difficult for the PDR program to assemble enough protected land from voluntary sellers in key locations that it can fully protect contiguous areas or address key policy needs.
- **Excess demand:** Also because of lack of funding, a PDR program may be unable to keep up with farmer demand to sell easements. There may be long waiting lists and missed opportunities to protect important land.
- **Long perspective:** These programs must take a long view – making a few acquisitions each year pursuant to a long-term vision for the protection of agriculture. There needs to be a matching long-term resolve on the part of the community to assure its willingness to continue with the acquisition program over time.
- **Ongoing investment in monitoring.** Monitoring and enforcing easements requires a continuing investment of time and resources.
- **Slow process:** These acquisitions can be time consuming and the process cumbersome making them a less-than-perfect solution if the landowner is in a hurry. For example, the WWRP program (below) is only open for applications every other year, and it can be as long as 16-18 months between application and a final decision.
- **Focus on agriculture:** PDR programs seem to work best when they are focused most on the needs of agriculture rather than when they are designed to address other public needs and when

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protecting agriculture is a secondary purpose. Without an agricultural focus, the program may tend to ignore key priorities of a successful farming industry, such as:

- Vigorous availability of the program in the areas of a where agriculture is most prevalent;
- Respect and account for local differences in needs of the industry;
- Capacity to step in quickly when an important property is threatened;
- Ability to consistently pay the full difference between market and agriculture value;
- Priority for farmland contiguous with other farmland;
- Recognition of the necessary relationship with nearby agricultural infrastructure businesses like processors, suppliers, and support services; and
- Determination to keep a program available over time rather than bonding out the revenue and spending it all at once but having the program only available for a short period.

Current programs:

Current PDR programs that might now be available to Klickitat County farmers include the following:

- **Federal Farmland Protection Program (FPP) (formerly FRPP):**
The recent Federal Farm Bill renewed and increased funding authorization for the FPP which could double over the next 5 years. This program will pay up to 50% of the cost for purchases of agricultural easements by a local PDR government program or land trust. There can be as much as several million dollars available from this source annually here the State of Washington. FPP funds can be matched by private, county, or state funds. And up to 25% of the purchase price can be contributed by the landowner (if so desired) in the form of a bargain sale. FPP will not pay for program or administration costs. For more information, see: <http://www.nrcs.usda.gov/programs/frpp>. **Contact:** Jeff Harlow, Soil Conservationist, NRCS Olympia Office, (360) 704-7784, jeff.harlow@wa.usda.gov
- **Washington Wildlife and Recreation Program(WWRP) Farmland Protection Program:**
In 2005, a farmland protection program was added to the WWRP. It pays up to 50% of the cost of purchasing an agricultural conservation easement. (This funding can match the Federal FPP funding to cover the full acquisition price.) The WWRP program is funded biennially in Washington's budget (odd) year. Applications are submitted to the Washington Recreation and Conservation Office (RCO) early in even-numbered years. They are evaluated and placed on a priority list and will receive funding in priority order, based upon the amount of the appropriation provided by the subsequent Legislature. WWRP will not pay for program or administrative costs. Applications are required to be received from local counties on behalf of the landowner so the county must be willing to participate – at least to the extent of submitting the application. See: http://www.rco.wa.gov/documents/Manuals&Forms/Manual_10f.pdf. **Contact:** Kammie Bunes, Washington Recreation and Conservation Office, (360) 902-3019, Kammie.Bunes@rco.wa.gov
- **Washington Office of Farmland Preservation:**
The 2007 Legislature created a new Office of Farmland Preservation within the Washington State Conservation Commission. The office was tasked with developing a plan for the preservation of farmland in Washington. (See SB 5108.) As this plan is being developed with the help of a statewide Task Force, the new office is also providing technical and other assistance to citizens and local communities in creating new local programs. Klickitat

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- **County programs:**
Since both the State WWRP and Federal FRPP programs require a match, neither can be used alone. But funding from each can potentially match funding from the other so, in theory at least, no additional funding is required. There are a few independent county programs around Washington (most notably in Whatcom, San Juan, Skagit, King, and Pierce Counties). Counties have the authority to adopt a small increase in property taxes to fund such programs locally, if they wish. While there is no county-level program here in Klickitat County, an interested farmer can apply to the WWRP and FRPP programs if the County is willing to officially sponsor the application. (Counties are required to be the applicants under the WWRP Program.) Klickitat County Planning Department (<http://www.klickitatcounty.org/planning/>) would be the starting point for a request for County involvement. **Contact:** Kurt Dreyer, Klickitat County Planning, 800 765-7239, planning@co.klickitat.wa.us.
- **Other State or Federal agencies:** Upon occasion, when the circumstances are appropriate, government agencies other than those specifically associated with agriculture may find money to preserve agricultural lands – when doing so can serve some specific need related to their particular mission. For example, the Washington Department of Fish and Wildlife or the National Fish and Wildlife Service have, occasionally, purchased easements on agricultural lands when some specific habitat or other environmental goal was threatened by its conversion. The easements required by such purchases will, of course, focus on preserving the environmental or other value sought by the agency. But this often turns out to be quite possible while still preserving continued successful agriculture on the property.
- **Private PDR funding – land trusts:** Upon occasion, some land trusts or other private charitable funders will be willing and able to purchase agricultural conservation easements. More often, however, land trusts will lack the funding needed to make such acquisitions. (See discussion of land trusts under D. Donated Easements, below.) And private charitable money to do is rare. Also, most land trusts are focused more on the preservation of natural habitat than on preserving working lands – although it is important to realize that most do also include protection of agricultural lands as one of their areas of interest and many are quite familiar with the needs of agriculture and have a good deal of experience dealing with farmers. A local land trust may also be willing to help a farmer assemble a purchase transaction that could be funded through some government agency or program. The Columbia Land Trust, which operates in Klickitat County, has a very good reputation for working with agriculture. See: <http://www.columbialandtrust.org/>. **Contact:** Lindsay Cornelius, Columbia Land Trust, 360-213-1212, lindsayc@columbialandtrust.org.

C. Transfer of development rights

Transfer of development rights (TDR) programs allow landowners to sell their rights to residential development at a market price to another party who may use those rights to increase residential density in a more urban location. Such transfers draw upon the frequent wish of developers to build to densities higher than already allowed or to obtain other land use accommodations that will

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make a project more profitable. Often, local governments (and the communities they serve) are willing to accept additional densities in one place in the community or to adapt existing rules for a particular project if, in exchange, the developer will pay an extra premium to help reduce densities elsewhere – for example, to protect farm or forest lands. The term “development right” usually refers to the right to build one residence for a family but it can be used in other ways as well. A TDR program will generally designate “receiving areas” where increased density may be allowed in the form of additional “development rights” if the developer has acquired those rights by purchasing them from a landowner in a designated “sending area” where less density is in the public interest. (See Appendix H – Transfer of Development Rights.)

For example:

- A county might require that development of any properties newly included within an expanded urban growth boundary be supported by development rights purchased by the developer from landowners in a designated agricultural sending area. Because of the increase in allowed density resulting from the urban boundary expansion, the newly included landowner receives a windfall in new value. Through TDR, some of that value is used to support reduced density in the designated agricultural sending area. Pierce County recently adopted an ordinance that will work in this way. <http://www.co.pierce.wa.us/xml/Abtus/ourorg/council/2007-91s%20final%20ord.pdf>
- A small city whose economy, character, and identity, are closely tied to the existence and economic health of surrounding farms may require new development projects within the city to purchase development rights from farmers in the surrounding agricultural countryside to protect it from sprawl. For example, the City of Arlington is currently working with Snohomish County to create such a program. See Mayor Margaret Larson’s description at: <http://www.ci.arlington.wa.us/index.asp?NID=88> and the explanation on Snohomish County’s website at: http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR_Planning/Projects_Program_s/Agriculture_Resources/Transfer_of_development_rights.htm

Issues and limitations:

- Lack of demand: A strong TDR program depends upon a strong growth management program. It is difficult to make TDR work if development rights are already readily available with few restrictions.
- Resistance to density: Of course a major objective of growth management is to concentrate density in some areas and to protect others. But despite the potential conveniences and advantages, residents of urban areas do not, necessarily always happily embrace more density. They may resist designation as a receiving area for a TDR program just as they might resist an increase in zoning density generally.
- Lack of motivation: For TDRs to make sense, the receiving community needs to want to protect the farm, forest, or other open lands that will be sending areas under the program. Many times this motivation is limited.
- Complexity: TDR transactions are complicated and time-consuming, which can make them slow and/or costly. There is a need for clear rules and public institutional support if TDR programs are to become cost efficient.

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Current programs and contacts: Some communities around the State have adopted (or are developing) TDR programs of various types. Two examples are provided above with web information.

D. Donated agricultural conservation easements

Most land trusts will accept donated agricultural conservation easements from those landowners who wish to make such a donation. A donated easement works like a purchased one – a restriction is placed on the title to the selected land generally for perpetuity. It can prevent those future uses that the landowner and the land trust agree should be restricted. While most land trusts will be somewhat more focused on other environmental values than on agriculture itself, most are also quite familiar with agricultural easements and may have considerable experience dealing with farmers and may care deeply about agriculture.

The charitable donation of an easement to a land trust may have tax advantages: For example, there may be a charitable income tax deduction for the amount of the landowners reduced land value and other contributions and expenses in the transaction. There may also be a reduction in the value of the landowner's estate that could reduce inheritance/estate tax liabilities.

In addition to the value loss resulting from contributing the easement itself, the landowner is likely also to incur other associated expenses. The land will need to be surveyed. For tax purposes, an appraisal will be needed of its value before and after the transaction. There are likely to be professional costs for tax accountants, attorneys, title insurance, and escrow. The land trust may need a contribution to cover its own expenses in completing the transaction. There will usually be a necessary contribution to a "stewardship" endowment account that will cover long-term monitoring and enforcement of the easement. All of these costs may be tax deductible, but they certainly add expense. (See Appendix F – Agricultural Conservation Easements.)

Issues and limitations:

- **Charitable capacity:** Many landowners are either unable or unwilling to make charitable contributions of this magnitude.
- **Land trust priorities:** The level of interest of a land trust in any particular farmland transaction may depend on its own priorities.
- **Strategic protection:** It is difficult to use donated easements to protect large contiguous areas of agriculture in multiple ownerships or to focus on other strategic policy considerations because of limited options in selecting which farms will be protected.
- **Landowner cost:** Even if a landowner wishes to donate an easement, he or she may still lack to cash resources for the associated contribution, stewardship endowment, and transaction costs.
- **Public cost:** There is no particular public cost associated with a donated easement – it can provide a public benefit with no current burden on taxpayers.
- **Coordination with land use planning:** Donated easements are not necessarily coordinated with long range land use planning as are public PDR or TDR programs.

Current programs:

- The Columbia Land Trust is a strong, respected land trust working in the Klickitat County area. See: <http://www.columbialandtrust.org/>. **Contact:** Lindsay Cornelius, Columbia Land Trust, 360-213-1212, lindsayc@columbialandtrust.org.

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- The Washington Association of Conservation Districts is currently forming a statewide land trust that will specifically focus on protecting working natural resource lands. Contact: John Larson, Executive Director, wacd-exec@wa.nacdnet.org, (360) 754-3588 x125.
- The Washington Cattlemen's Association is also in the process of either forming a statewide land trust or joining in a regional effort with the Oregon Rangelands Trust. To learn the status of the Washington Cattlemen's efforts, contact: Jack Field, Executive Director, Washington Cattlemen's Association, (509) 925-9871, jfcattle@kvalley.com.
- There are also some nationwide land trusts that may be appropriate for a particular landowner's needs: These include: The Nature Conservancy: www.tnc.org, Trust for Public Lands, www.tpl.org, and American Farmland Trust, www.farmland.org.
- The Land Trust Alliance's website contains a locator that can help find land trusts in various places around the country at: <http://www.ltanet.org/landtrustdirectory>. LTA is a national organization that supports and certifies local land trusts.

E. Right to Farm laws

As agricultural lands are fragmented and surrounded by inconsistent residential uses, farmers become the target of nuisance lawsuits. These suits may be driven by concerns about noise, the use of pesticides, fertilizers, or other chemicals, odors from livestock operations, or a host of other complaints that may be largely unavoidable as a normal part of agricultural operations. Right-to-farm laws are typically written to specifically allow farmers to conduct normal agriculture and to provide some level of immunity from such lawsuits. (See Appendix I, Right to Farm Laws.)

Constitutional limitations (see below) can, reduce the effectiveness of right to farm laws. There have, however, been some useful approaches to emerge where a strongly agricultural community wants strong right to farm protection for its farmers:

- A community may pass a very aggressive, right-to-farm law that might otherwise skirt or exceed constitutional limits but also provide that these protections only apply if the farmer is using farming practices that are considered "reasonable" or "commonly accepted" in the industry at the time. It becomes more difficult for a complaining neighbor to recover if the jury will be instructed that the farmer's conduct was commonly accepted in the industry and more difficult for the court to find a commonly accepted practice is also a "nuisance."
- A community may require that all purchasers of land in or near to an agricultural area be notified that when they purchase in a farm area, that there may be sights, sounds, smells, or issues associated with agriculture that may affect their property, and that the farmers in the area are legally protected by right-to-farm laws and will be insulated from nuisance lawsuits.
- The community may go further and require purchasers to actually sign a statement at the time of purchase of such properties, as a part of the closing documents, that acknowledges that the buyer knows they are buying land in a farming area and that they understand and accept the possibility that nearby agricultural activities may impinge on their enjoyment of their property. This document is filed of record at the time of sale. The idea behind this is that, should a suit occur, the farmer can present a copy of this document to the jury to weaken the plaintiff's case.
- Finally, a community may actually require, as a part of the sale of any properties in an agricultural area, that the buyer sign a document expressly and legally waiving and relinquishing any rights they may have to sue a farmer for nuisance arising out of a reasonably and normally managed farming operation. It is not entirely clear if such a waiver will be fully effective, but this may also be worth a try.

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Issues and limitations:

- Constitutional limitations: The weakness in right-to-farm laws is that reasonable enjoyment of one's real property free from unreasonable "nuisance" uses on neighboring lands is a British common-law right that was incorporated into the notion of property rights at the time of our U.S. Constitution. There are, therefore, limitations on the legal authority of governments to pass laws that limit that common law and constitutional property right.
- Divergent interpretations: What is "reasonable" or "commonly accepted in the industry" can sometimes be unclear and subject to differing opinions.
- Anyone can sue: One can pass a law that helps farmers defend against nuisance lawsuits, but it is essentially impossible to completely prevent someone who feels aggrieved from filing one. Even if one wins, defending such a case can be costly and discouraging.
- Administrative or set-up cost: It may be a bit complicated and potentially costly to create and administer a system that requires certain properties in a county, depending on their zoning or on their proximity to a particular zone, to be sold subject to a signed "waiver" or "acknowledgement" by the buyer like that described above.

Current programs:

- Klickitat County right-to-farm ordinance: The Klickitat County Commissioners maintain a great website entitled: "Tips for Country Living" that advises new community members about the issues and potential adjustments that might be associated with moving to a rural area. (See: <http://www.klickitatcounty.org/commissioners/ContentROne.asp?fContentIdSelected=662204162&fCategoryIdSelected=1521804453&fX=X>.) Included there is a section called: "Living with Agriculture," that lays out some of the potential conflicts people might experience when residing in a farming area. The site indicates that Klickitat County has adopted a right-to-farm ordinance.
- State of Washington right-to-farm law: Washington's right-to-farm statute is at: [RCW 7.48.300 ff](#). The law was rewritten and made stronger in 2007. It provides that farming activities that are conducted in conformity with law are presumed not to constitute a nuisance. And it allows a farmer who successfully defends such a suit to recover costs and attorney fees incurred in its defense as well as to recover "exemplary" damages if the court finds the suit was brought maliciously or without just cause.

F. Market demand and economic development

Making sure agriculture is profitable is key to the success of any farmland protection effort – but supporting market demand for local farm products and stimulating economic development for local agriculture are among the most direct.

- Local markets: The vast majority of the market for agricultural products is global. But one way to help keep land in production here in local communities is to encourage market demand for farm products grown locally as opposed to those grown elsewhere. This may require new local support or infrastructure (like farmers markets) or land use changes (to allow or encourage direct market activities on private farms) and it may require changes by the producer in crops, marketing, and approach. But it also may generate a sufficient price bonus for the farmer to justify the effort.

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There is an emerging “community food connections” movement here in Washington and elsewhere in the country. People want to know the sources of their food. They want to know who produced it, under what conditions, and with what practices. There is, of course, no local food without local farms (and farmland) to supply it. So tying into the food connections movement is a viable approach to increasing the ability of farms here to afford land here – helping to address the land location issues identified at the start of this paper. This can also help cover increased costs of environmental performance through so-called “green” marketing. (E.g. through environmental certification programs, “Salmon-Safe,” marketing non-use of pesticides, etc. See “Assuring Environmental Sustainability – G, below.) Or the farmer may create supplemental income for the farm and increase market visibility by selling other environment related or consumer connection services (e.g. ag-tourism, on-farm sales of non-farm or off-farm products, wildlife viewing, hunting and fishing, etc.) In each case, the above consumer preferences can leverage programs that help farmers market their products locally and that address the emerging consumer demand for connections to the sources of their food.

- Economic development planning: Wherever the markets are, however, there is often a need for local, community-based economic development planning. Typically, local communities have Economic Development Councils. And these Councils generally develop an economic development strategic plan for the community. But it is extremely rare for agriculture to be included in the planning – even where agriculture is the largest, most significant industry in the community. The development and existence of such a plan provides insights for community leaders, opportunities for farmers and farm services, and credibility to the local agriculture industry as a positive contributor to the economy and as an industry that expects to thrive and grow in the years to come. (See, generally, Appendix E – Agricultural Economic Development.) Such planning can highlight opportunities and issues that could affect the future of the local industry.

Issues and limitations:

- Lack of Agriculture involvement in economic development. Most Economic Development Councils do not include agriculture, which makes it easy for local communities to ignore or forget to plan for the future of what may be their largest industry.
- Lack of clarity in consumer motivations: It is not yet entirely clear how willing consumers are to pay more for the assurance that their products were produced in ways that are socially responsible or friendly to the environment. Clearly they will pay for quality, freshness, healthfulness, etc. But studies have not yet decisively sorted out the market impact of environmental or social responsibility. Programs related to both are listed below.
- Perceptions of “local”: There are differing perceptions about how “local” people want their food to be. This uncertainty can dilute the effectiveness of collective local marketing efforts.
- Direct marketing is expensive: Making direct connections with consumers is time-consuming and, hence, costly. Often the difference can be made up for through the price advantage of bypassing the wholesale distribution network – but not always.
- Farmer preferences: Many producers prefer growing over marketing.
- Land-cost leverage: Those farms that are the most “local” to urban markets, and the ones for which it is most convenient to form consumer connections, will probably also be on land that is the most expensive and vulnerable to competition from development.

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Current programs:

- **Organic certification:** People buy organic for a variety of the reasons listed above – including the belief that the product is more environmentally friendly, more healthful and, perhaps, more local. **Contacts:** The WSDA organic program manager is: Miles McEvoy, 360-902-1924, mmcevoy@agr.wa.gov. See WSDA organic program website at: <http://agr.wa.gov/FoodAnimal/Organic/default.htm#OrganicFoodProgram>.
- **Washington Tilth:** The Washington Tilth Producers is a non-profit representing the State's organic producers. They maintain a directory of its members on their website at: Their Administrative Director is: Nancy Allen, 206-442-7620, nancy@tilthproducers.org
- **From the Heart of Washington (HOW):** HOW is a public-private effort, supported by WSDA, to market Washington products locally. See: <http://www.heartofwashington.com>. **Contacts:** From the Heart of Washington, Washington State Department of Agriculture Attn: Communications Director, (360) 902-1800, HOW@agr.wa.gov
- **Food Alliance:** The Food Alliance certifies producers as environmentally and socially responsible and then helps them market their products under a widely recognized label. See the Food Alliance website at: www.foodalliance.org. **Contact:** Scott Exo, Executive Director, 503.493.1066, ext 30, scott@foodalliance.org.
- **Salmon-Safe:** Salmon-Safe certifies farms as friendly to salmon, provides a marketing label, and assists farmers in obtaining their certification by doing (and helping to fund) salmon restoration work on the farm. The Washington program is managed by Stewardship Partners in Seattle. The Stewardship Partners website is at: www.stewardshippartners.org. **Contact:** David Berger, Executive Director, (206) 292-9875, david@stewardshippartners.org
- **Farming and the Environment:** Farming and the Environment is a non-profit dedicated to bridging the gap between farmers and environmentalists. They also certify and then recognize approved farmers as environmentally responsible on its website thus allowing them use this recognition in their marketing efforts. They are on line at: www.farmingandtheenvironment.org. **Contact:** Wendie Dyson, (206) 310-8040, market@dmfm.org
- **USDA federal grant assistance:** USDA agricultural grants are available through Sustainable Agriculture Research and Education (SARE) and other programs to help farmers with marketing, including environmental marketing. The SAFE website is at: <http://www.sare.org>. **Contact:** For more information, contact the Western SARE office, (307) 837-2674.
- **WSDA Small Farms & Direct Marketing:** The Washington State Department of Agriculture operates a Small Farms and Direct Marketing division that helps with environmental marketing, among other things. Their web address is: <http://agr.wa.gov/Marketing/SmallFarm>. **Contact:** Patrice Barrentine, Program Coordinator, (360) 902-2057, smallfarms@agr.wa.gov
- **WSU Small Farms Program:** The Small Farms Program at Washington State University is a part of WSU's Cooperative Extension program and of its Center for Sustaining Agriculture and Natural Resources (CSANR). The program is on line at: <http://smallfarms.wsu.edu>. **Contact:** Marcy Ostrom, Director, (253) 455-4514, mrostrom@wsu.edu
- **Washington State Farmers Market Association (WSFMA):** WSFMA represents the local farmers markets in Washington. See: <http://www.wafarmersmarkets.com> where there is a directory of markets for WA. **Contact:** Jackie Aitchinson, Executive Director, Washington State Farmers Market Association, (206) 706-5198, info@wafarmersmarkets.com

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- *Pacific Northwest Farm Direct Marketing Association*: This group represents direct farm marketers in our region. **Contact:** Peggy Black, President, (541) 863-3770
- *Food Policy Councils*: There is increasing interest in food policy councils. Both King County and the Seattle City Councils recently took action on this front. See WSU – King County Extension’s website at: <http://king.wsu.edu/foodandfarms/foodpolicycouncil.htm>. **Contact:** Sylvia Cantor, 206-205-3131, sylvia.kantor@kingcounty.gov
- *Agricultural Commodity Commissions*: Washington’s commodity commissions have not yet been deeply active in direct marketing – although there is doubtless some work going on and it is probably best to inquire directly. The Washington State Department of Agriculture maintains a list with contacts for commodity commissions at: <http://agr.wa.gov/Marketing/CommodityCommissions/CommodityCommissionList.htm>.
- *Gorge Grown Food Network*: This group represents direct market farmers in the Columbia River Gorge and promotes their products with consumers. See: http://www.gorgegrown.com/about_ggfn.cfm. **Contact:** Gorge Grown Food Network, 993A Tucker Rd., Hood River, OR 97031, 541.490.6420, info@gorgegrown.com.

G. Limiting taxes – current use taxation

Current use taxation recognizes that a viable farm business can only afford to pay property taxes on land at a level commensurate with its productivity for agriculture. If farmers and ranchers were required to pay property taxes based on the actual fair market value of their land, this would create substantial additional pressure for them to sell for development. Washington’s current use taxation law (RCW Ch. 84.34) was adopted by voter initiative in 1968 and created a State Constitutional amendment that was supported by some 68% of the electorate. There are a little over 11 million acres enrolled in the program in every county in the State, including Klickitat County. Counties can appoint a 5-member Advisory Committee to help administer these programs – but only about half of the State’s counties have actually done so.

Landowners who believe their lands qualify as agricultural and that the program will save them taxes apply with their local County Assessor. The Assessor performs a dual appraisal – determining the full fair market value and the value for agricultural production. If the property qualifies as engaged in agriculture, it can be taxed at its lower current agricultural use value rather than its higher fair market value – often at a very substantial saving (in some places this can amount to a tax savings of as much as 97%). If the landowner subsequently decides to develop the property and remove it from Current Use designation, he/she must give two years notice, and pay back taxes for the seven years preceding the change in use. The back tax is measured by the difference between what would have been paid and what was actually paid in the current use program, plus interest and penalties depending on how far in advance notice of the change is provided. (Generally, see Appendix K – Differential Assessment.)

Issues and limitations:

- Mostly preventative: Current use taxation does a good job of preventing skyrocketing property taxes (based on skyrocketing land values) from becoming a driving factor that pressures landowners out of agriculture. The program is probably not, however, a significant deterrent preventing land from being removed from agriculture. The market value of the land is usually so high that it minimizes any back taxes, interest, or penalties due at the time of conversion to development.

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- **Cost effectiveness:** Of course the program only makes financial sense if the landowner intends to keep the land in agriculture for 10 years or more. But there is no way to know how many of those landowners who participate after that initial 10 years really intend to develop at some point in the near future. For those who do, the program may sometimes be seen as a subsidy for speculative land investment in future development.
- **Fiscal impact on county tax revenue:** The program can have a significant impact on county tax revenue. In rural counties, property taxes on farm and ranch lands may represent a large percentage of total revenue. But, even paying at such levels, farmers still generally pay more in taxes than they receive in community services. (See Appendix M – Cost of Community Services Studies.)
- **Inconsistencies in application:** Assessors are somewhat free to interpret the Current Use program with a good deal of local discretion. Tighter requirements may generate more county revenue, so Assessors tend, understandably, to look closely. But there is a good deal of variation among different counties in how, for example, the requirements for keeping livestock are interpreted. Assessors in agricultural counties tend to be more friendly for agriculture.
- **No application to farm improvements:** The current use program applies only to the land, not to improvements on the farm – fences, barns, worker housing, etc.
- **Cost of community services:** Even under current use taxation, farms still pay considerably more in taxes than they require in community services. There is strong justification for arguing that farm taxes should be even lower, or that government should be providing farmers with greater support.

Current programs: Current Use taxation programs are operated independently by each County Assessor in compliance with the State statute (RCW Ch. 84.34). The Washington State Department of Revenue provides support to local assessors and collects statistical data on the program which is of interest to the State since a portion of local property taxes also supports the State budget. See the description at the Department of Revenue's website at: http://dor.wa.gov/docs/Pubs/Prop_Tax/OpenSpace.pdf. And see the statistics at: http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/2007/Property_Tax_Statistics_2007/default.aspx **Contact:** The State Department of Revenue number for Current Use/Open Space taxation questions is: (360) 570-5865. The Klickitat County Assessor's Office is at: <http://www.klickitatcounty.org/assessor/>, Van Vandenberg, Assessor, 509 773-3715 or 800 764-2235.

H. Supporting environmental sustainability

Agricultural lands offer a huge opportunity to improve the environment and correct for societal environmental degradation – without diminishing their economic viability for traditional farming. Much, perhaps most of what farmers already do and can do by way of environmental conservation actually also increases the productivity of the farm/ranch business. Whether it is planting and growing trees or other native vegetation, managing for the protection of water quality, minimizing floods, recharging aquifers, assuring the survival of animals, sequestering carbon, or simply preserving a productive open landscape, our farmers are the ultimate skilled professionals. Much of this is already done by farmers every day – for free.

Most farmers believe, however, that ever rising public expectations for environmental performance from agriculture is at least one of the pressures driving them off the land. Certainly the costs of

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environmental compliance have increased over the years. As the population of our region continues to grow, it seems likely that the need to mitigate for its environmental impacts will also grow. It also seems inevitable that urban, non-farm majorities will increase. And it seems likely that these pressures will continue to produce greater environmental demands on agricultural lands – which represent roughly half of the private lands in our State. One way to help our farmers, therefore, is to make it financially possible and practical for them to manage their land for environmental sustainability while also keeping it in economically viable traditional food and fiber production. (See Appendix O – Discussion Paper on the Impact of Environmental Regulation on Washington Agriculture.)

This conflict plays itself out in four general approaches to assuring environmental sustainability in agriculture:

- *Regulation – Critical Areas Ordinances, etc:* One approach to assuring environmentally sustainable management of agricultural lands is through environmental regulation. Some (but not all) of the land-use-related environmental regulation currently experienced by agriculture is driven by long-standing, ever-tightening requirements of federal law (e.g. Clean Water Act, Endangered Species Act, National Environmental Policy Act, Tribal Treaties and related court decisions, pesticide regulation under the Food Quality Protection Act, etc.). These local governments are often required to assure compliance with these laws. Local critical areas ordinances under Washington’s Growth Management Act, or under the Shorelines Management Act, for example, are among of the places where farmers directly experience specific local requirements that may have resulted from the dictates of federal law.
- *Conservation incentives and assistance:* A second approach has been to provide technical assistance and so-called “cost-share” funding to farmers willing to implement conservation best management practices. Implementing these practices generally provides a mix of benefits – some private to the landowner, some public. To the extent that current or future “conservation cost-share” programs can provide sufficient revenue, they may also come to be seen as a source of financial support for agriculture.
- *Conservation markets:* To the extent that farmers can now or in the future, receive payment specifically in exchange for providing environmental services needed by the rest of society, this could increasingly become a way for them to pay for improved environmental performance that will make their operations more profitable. Examples include payments for carbon sequestration, for water quality trading credits sold to regulated point-source pollution dischargers, and environmental mitigation payments made by developers to farmers who help them make up for the damage caused by development projects.
- *Green markets:* A fourth approach, “green” marketing, uses the power of a green marketplace to support environmentally friendly farming. (See “local market demand” in Sec. E, above.)

Issues and limitations:

Regulation and incentives: Understanding the role of regulations requires consideration of the choice to regulate vs. other, more incentive-based approaches:

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- Private vs. public costs: Regulations may be less costly for *government* since the expense of their implementation largely lies with the regulated community but broader, non-governmental costs may be hidden. For example, there may be a disruption cost associated with regulation that can be avoided with incentives. Because incentives are administered on a case-by-case basis, they typically result in costs being incurred at only those sites where improvements are actually needed and have been deemed beneficial (rather than throughout a community, activity, area, or regulated industry). Actions resulting from incentives are usually well-adapted to the site-specific needs of the particular property involved, avoiding unexpected economic side-effects. Incentives minimize unnecessary disruption of private economic activity because they are only used where they are truly workable and where the landowner is a willing participant.
- Landowner contributions to cost: Because the landowner is an active participant, often they will share the cost of incentive-based projects thus reducing the expense for the public.
- Individual and community synergy and support: Incentives can enlist willing, even enthusiastic landowner participation in achieving social objectives rather than tending to incite potential opposition and unanticipated enforcement battles.
- Opportunities for affirmative restoration: Achieving affirmative physical improvements in conditions on the land may be easier with incentives than regulations. When the landowner is an active, willing participant, such improvements will quite possibly address both the needs of the landowner and of the public.
- Encouraging socially-beneficial landscapes: Incentive programs can have the added positive effect of helping farmers stay in business and helping them keep their land in agriculture and out of landscape-fragmenting, environmentally harmful development.
- Fairness: It is not always easy to differentiate between what duties should fall on the landowner's shoulders and what should be society's collective responsibility. So it is difficult to assess when to use regulation and how much should be paid for through the public purse.
- Future regulatory uncertainties: There can be uncertainties about how both regulations and incentives are administered, but much of the concern over regulation expressed by farmers arises out of uncertainty about increased requirements in the future. Like other businesses, farmers also need to correctly anticipate new costs and to have stability in those costs.
- Lack of differentiation between shared responsibilities: Science is increasingly identifying tolerable overall limits on our collective environmental impacts. But the performance expectations in avoiding these impacts for any particular group or activity (like agriculture) are not yet clear. So it is not yet clear how much should be seen as a social responsibility and be required through regulation, and how much should, in fairness, be seen as a duty of citizenship and be purchased through incentives (see above). This debate undermines the argument for adequately funding incentives. And it pervades any discussion of the use of regulations.
- Counter-productive outcomes: Since regulation imposes cost, it will generally decrease a farm's profitability and can be a factor driving the land out of agriculture. Since the more intensive uses that will replace the farm should the farm business fail are much more harmful to the environment, the net outcome may be environmentally negative.

Issues and concerns with incentive programs:

- Insufficient funds: Total funding for the conservation cost-share system is woefully inadequate. The result is that only a few farmers are actually able to participate and only a very small portion of the need is addressed. This lack of funding is at the root of many of the further problems listed below.

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- Lack of strategic focus: Cost-share programs are voluntary. But because funding is limited, there are typically only a few applicants – mostly volunteers for whom the money may not be a major consideration. So the projects and environmental improvements go where the applicants are, not necessarily where the need is the greatest. Keeping public expenditures low by enlisting motivated volunteers is probably a good thing. But lack of strategic focus may undermine some of the gains.
- Lack of enforcement: Because the incentives system is so under-funded, it depends highly on volunteers. So the agencies providing cost-share assistance tend to de-emphasize enforcement that might discourage participation. If the amounts offered were more substantial, participation would be more robust and the potential for enforcement much less of an issue.
- Lack of access to and awareness of programs: While total conservation funding is low, the total number of programs offering it is large. Each program has a different goal and focus and different requirements for participation. The result is a system that is very difficult for farmers to navigate in finding assistance, even assuming that it is available. And once help is found, the application process is often complex and time-consuming to a degree that many will simply opt out of participating.
- Programs not coordinated or offered as a package: Because each conservation funding program is offered independently, often by a separate agency, they are not easily assembled into a package that makes sense for any individual farmer. The farm may qualify for one, but not for the other, etc. For good reason, the farmer may not wish to participate unless multiple issues can be handled simultaneously.

Issues concerning “conservation markets”:

- Lack of conservation marketplace: So far, conservation markets are poorly funded and not generally available to most farmers. For example, there are carbon markets, but they still pay very little and generally apply only to a few producers.
- Uncertainty about what will be involved: The potential issues of concern for agriculture that might be involved in conservation markets are still open for debate. Addressing these uncertainties will be needed if the agriculture industry is to ultimately support them.

Current programs, missions, and contacts:

Regulations: There are regulatory programs at all levels of government – including at the Federal, State, and county level, e.g. through critical areas and shorelines management authority. A few useful contacts:

- *Department of Ecology*: The Washington Department of Ecology is responsible for air and water quality protection. Its website on non-point pollution may be particularly useful for farmers: <http://www.ecy.wa.gov/programs/wq/nonpoint/index.html>. **Contact**: Ecology’s staff directory is on line at: <http://www.ecy.wa.gov/org.html>.
- *Department of Fish and Wildlife*: WDF&W’s role is the protection of fish and wildlife habitat. Its authority in connection with water hydraulic permitting and other habitat related regulation is discussed at: <http://wdfw.wa.gov/habitat>. **Contact**: WDF&W Habitat Program, 360-902-2534, habitatprogram@dfw.wa.gov.
- *Office of Regulatory Assistance*: The Governor’s Office of Regulatory Assistance is on line at: <http://www.ora.wa.gov>. **Contact**: 800-917-0043, 360-407-7037, help@ora.wa.gov
- *WSDA Small Farms & Direct Marketing – direct marketing “green book”*: WSDA’s Small Farms and Direct Marketing division publishes a “Green Book” that provides regulatory

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assistance to farmers engaged in direct market work. Their web address is:

<http://agr.wa.gov/Marketing/SmallFarm>. **Contact:** Patrice Barrentine, Program Coordinator, (360) 902-2057, smallfarms@agr.wa.gov

- *County ombudsmen:* Some counties (not Klickitat) have also adopted programs with the specific purpose of helping farmers navigate complex government requirements. One example is the Pierce County Farmbudsmen program. **Contact:** (For the Pierce County program) Carrie Sikorski, (253) 798-FARM, csikors@co.pierce.wa.us
- *Ruckelshaus process:* Also in 2007, the Legislature passed SB 5248 creating a multi-year negotiation/study process to include leading farm and environmental groups and interests in a negotiation and study to deal with increasing environmental pressures on farms. The process is facilitated and supported by the William D Ruckelshaus Center. There is more information on the web, including who is participating in this process at: <http://ruckelshauscenter.wsu.edu/projects/caop.html>. **Contact:** Lane Rawlins, Ph.D., Director, Ruckelshaus Center, (509) 335-2937, rawlins@wsu.edu

Conservation incentives: There are a great many conservation incentives programs available for farmers from all levels of government. The following are definitely the most significant places to start in order to learn more about them:

- *Natural Resources Conservation Service (NRCS):* NRCS is the USDA agency that administers the conservation programs in the Federal Farm Bill, so it is the agency to contact concerning cost share, technical assistance, or other help under those programs. There are local NRCS offices throughout Washington (see local field office locator at: <http://www.wa.nrcs.usda.gov/contact/fieldoffices.html>). **Contact:** In Klickitat County, the NRCS Office is located at the Goldendale Service Center at 1107 South Columbus Avenue, Goldendale, WA 98620-9268, (509) 773-5822. The NRCS employee contact directory is on line at: <http://www.wa.nrcs.usda.gov/contact/index.html>. Gus Hughbanks, Washington State Conservationist, (509) 323-2900.
- *Local conservation districts:* There are three conservation districts in Klickitat County. These are independent local governments whose purpose is to “work with landowners on a voluntary basis, providing incentive-based conservation help on private lands.” Their local staffs provide farmers with technical assistance and help identify sources of cost-share funding to support implementing those practices. They are supported at the State level by the Washington State Conservation Commission. **Contacts:** Mark Clark, Executive Director, Washington State Conservation Commission, (360) 407-6200. Klickitat County’s three local conservation districts are: Eastern Klickitat Conservation District, 1107 S. Columbus Ave., Goldendale, WA, 98620-9296, (509) 773-5823 ext 5; Central Klickitat Conservation District, (same location and phone as Eastern); Underwood Conservation District, 1770 NW Lincoln St., White Salmon, WA 98672-0096, (509) 493-1936.
- *Conservation Incentives Clearinghouse:* Among the tasks assigned to the new Office of Farmland Preservation by SB 5108 in 2007 was creation of a conservation incentives clearinghouse, that would help people identify useful incentives programs. This work, as of the present date, is only partly completed, but in the months to come, the new clearinghouse should become a new tool for the public and conservation professionals to help identify what sources of funding and help are available to assist landowners interested in voluntary conservation assistance. **Contact:** The contact for the Office of Farmland Preservation is Ron Shultz, (360) 407-6200, rshu461@ecy.wa.gov.

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Conservation markets: There is, so far, no formal “conservation marketplace” in Washington. The 2008 Legislature did commission a study of the workability of such markets which is now getting started, due for submission at the end of 2008. **Contact**: The lead on the study, and potential pilot projects, under SB 6805, is the Washington State Conservation Commission. Ron Shultz, (360) 407-6200, rshu461@ecy.wa.gov.

I. Assisting farm transition

Transitioning ownership/operation of a farm to a new owner – whether by outright sale or to a family member – can be challenging. Farm businesses are complicated. And transitioning their ownership involves issues of business contract and real estate law, estate planning, retirement planning, business planning, training, mentoring, personal counseling, and a host of other matters that many farm families tend to ignore, even as retirement draws near.

For example, a farm family that gives careful, advance consideration to retirement and estate planning may be able to avoid selling their land for development and to pass the farm along to a child who wishes to take over the operation. Similarly, how and when will ownership and (equally importantly) responsibility be transitioned to a child? Is there a role for life insurance? Should the farm be incorporated? Farm Transition programs are designed to help with these issues. They provide workshop education and written materials to help farmers make this transition. They identify legal, accounting, counseling, and other resources that are available in the community. And they, in some cases, keep listings of farms available for sale and of people interested in beginning in farming and make early connections between retiring farmers and those who wish to take over their operation. (See Appendix N – Farm Transfer and Estate Tax.)

Issues and limitations:

- Difficulty getting to those who need the service: These programs can provide education, professional information, and assistance to farmers, but they still depend upon the farmer coming to the program. Many farmers do not know the services exist and it is expensive to get the word out to all those who might need or make time for them
- Estate planning is challenging: Most people tend to ignore estate planning – including farmers. And the issues associated with farm transition tend to cut to the heart of farm family personal issues. There is a tendency to ignore them until it is too late.
- Land cost differentials: FarmLink (see below), for example, is a program that can put a retiring farmer together with a new, entering farmer. But the land cost differential between market value and value for agriculture still exists and can stall a successful transition.

Current programs:

- Washington FarmLink. This program is housed in Seattle, but it is a statewide program, available to anyone (new farmers sometimes come from Seattle). FarmLink is described at: <http://dnr.metrokc.gov/wlr/wafarmlink/What%20is%20farmlink.htm> and at: <http://www.cascadeharvest.org>. **Contact**: Mary Embleton, Executive Director, Cascade Harvest Coalition, (206) 632-0606, mary@oz.net
- Office of Farmland Preservation: In its starting legislation, the Office of Farmland Preservation was charged to “begin the development of a farm transition program to assist in the transition of farmland and related businesses from one generation to the next, aligning the farm transition

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program closely with the farmland preservation effort to assure complementary functions.”
The OFP website is: <http://ofp.scc.wa.gov>. **Contact:** Ron Shultz, (360) 407-6200,
rshu461@ecy.wa.gov.

J. Credit to buy farmland

Agriculture is a tough, competitive business. Farmers do not just compete with their similarly-situated neighbors. They also compete with every other farmer on the planet, with every level of sophistication and from the most capital intensive first world operation to third world farmers driving donkey carts. When farmers seek a business loan, they are asking the lender to join in the same risks the farmer faces – risks involving the weather, commodity markets, labor, regulation, input prices, water, etc. Only a savvy and experienced lender will undertake such risks. All borrowing by farmers (for whatever purpose – land, operations, equipment, etc.) involve these uncertainties. Land investments are among the largest most farmers will make and they are, therefore, the ones where their problems with credit may be the greatest. And land will often be included as security for almost any loan.

There are particular limitations on the availability of credit for farmland acquisitions. Agricultural lenders make what they consider to be “business loans.” These are loans that are expected to be paid back from revenue generated by the business enterprise. When lenders “pencil out” the viability of a loan for a farmland acquisition, they are generally looking at whether the farm business that is buying that land will be able to pay back the loan – not just at whether the market value of the land is sufficient to provide security. It is not considered sound lending practice to make what are termed “security loans” where the lender looks primarily to its position in a foreclosure rather than at the real prospect for normal repayment.

This places farms in a difficult borrowing position for land acquisitions. Both the lender and the farmer must carefully consider whether the additional productive earning capacity of the land being bought will be enough to cover the anticipated loan payments. With equipment purchases, this may be fairly straightforward. But given that land values throughout Washington are being driven far out of reach by competition from non-farm uses, the price being paid may have to be far in excess of the productive capacity of the land being purchased. So securing sufficient credit to buy land for agriculture can be a serious problem.

The current approach to making credit available to farmers for land is the same as for all farm credit needs. The Federal government, through the Federal Farm Credit Banks Funding Corporation, (see: <http://www.farmcredit-ffcb.com/farmcredit/fcsystem/overview.jsp?uniq=1218659191427>) makes wholesale credit available to a system of independently owned local funders known to farmers as Farm Credit Services (FCS). FCS specializes in agricultural lending. There are also special, reduced loan rates, available to beginning farmers in Washington through FCS supported by federal loan guarantees through the Washington State Housing Finance Commission. The Washington use of this federal lending guarantee was authorized by statute in SB 5092 passed by the 2005 Legislature.

Issues and limitations:

- Same issues apply: A Farm Credit Services lender, supported by the availability of federal credit through the Federal Farm Credit Banks Funding Corporation, might be able to offer a

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slightly better deal to a farmer than a standard bank lender, but FCS lenders are still constrained by the same sound lending practices faced by all business lenders.

- Leverage from reduced interest: There is leverage to be gained through reduced interest, since loan payback capability of a business will depend heavily on the amount of the payments and the total that must be repaid is heavily affected by the interest over time. So it is worth considering whether there may be other ways (in addition to the new farmer loan program) to provide low interest lending to farmers – perhaps especially for land acquisitions.
- Limited lending pool: The pool of knowledgeable farm lenders is limited with few options available for most farmers.

Current programs:

- Northwest Farm Credit Services provides competitive loans to farmers as a part of the Federal Farm Credit System. Their main NW office is in Spokane, but they have lending offices throughout the Pacific Northwest (see their office locator at: <http://www.farm-credit.com/Default.aspx?pageid=85>). **Contact:** Northwest Farm Credit Services – Spokane Office, (800) 743-2125, farm-credit@accountlist.com. There are local offices in The Dalles at 3591 Klindt Drive, Suite 110, The Dalles, OR 97058, (541) 298-3400, (800) 452-8575; Pasco at 9530 Bedford Street, PO Box 2585, Pasco, WA 99301-2585, (509) 542-3720; and, Sunnyside at 2735 Allen Road, PO Box 1610, Sunnyside, WA 98944, (509) 836-3080.
- The Beginning Farmer/Rancher loan program made possible by passage of SB 5092 by the 2005 Legislature is administered by the Washington State Housing Finance Commission and is available through Northwest Farm Credit Services, above. It provides low interest loans to beginning farmers up to \$450,000. Additional information about the program can be found at: <http://www.wshfc.org/farmranch>. **Contact:** With FCS, contact the local office or: Wendy.knopp@farm-credit.com, (509) 340-5476. In addition to FCS, one can contact: Tia Psycheff, Washington State Housing Finance Commission, 206-287-4416, Tia.psycheff@wshfc.org.

K. Reducing the impacts of government action

The private marketplace is, by no mean, the only way farmland can be fragmented or fall to non-farm uses. Actions of government itself can also play a role. This may happen through condemnation, environmental restoration, government purchases, or shifting government policy that affects the continued use of land for agriculture. For example:

- Suppose a new school is needed somewhere near a city or town. Where will this school be built – on expensive land within the city, or out on open, flat, uncluttered, inexpensive farmland? The temptation to save money may just be too great to resist.
- Suppose a growing town area needs water and decides to condemn water rights now belonging to a nearby farmer? Will the impact on that farm or on its neighbors be a significant consideration that is taken into account in making this decision?
- Suppose a State institution, (like Washington State University or the Department of Natural Resources, for example), decides to sell off local farmland that it owns. Will it consider the possibility of restricting its future development to protect agriculture? Or will it just sell to the highest bidder and see it get developed?
- Suppose a new wetland mitigation banking site is needed to help make up for the impacts of a local transportation project or a housing, commercial, or other development. Will that site be placed on prime farmland without any particular consideration of the effects on agriculture?

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In any of the above cases, will there be a chance for public input? Will any consideration be given to the impacts on local agriculture? Will there be a formal process for the decision with some standards and criteria that must first be met? Will there be some required exploration of possible alternatives that to not affect agriculture?

These questions are the kind that can be addressed through a farmland protection policy act (FPPA). The federal government has adopted such an Act. The federal law creates certain procedural requirements and standards of conduct when actions by federal agencies will have a negative impact on farmland. The FPPA is included in Public Law 97-98, Subtitle I of Title XV, Section 1539-1549. There is currently no such law at the State level in Washington, although there is a neglected, but still-legally effective Executive Order that was signed by Governor Dixy Lee Ray in 1980 that directs State agencies to “consider” the impacts of their land use actions on farmland protection. (Ex. Order 80-01, Farmland Preservation). Should such a policy be adopted at the local level?

Issues and limitations:

- Lack of State and local policy legislation: The existing (but largely forgotten) Governor’s Executive order requiring that State agencies “consider” farmland impacts provides little real protection from State action. And there is nothing in place that affects government actions at the county and municipal levels.
- Federal law weak: Even though there is a Federal Farmland Protection Policy Act, it is thought to be largely toothless and ineffective.
- No clear policy statement: There are arguments both ways about whether the State should adopt an effective “no net loss of farmland” policy. But without something of this kind, pressures for development, from the existing national “no net loss of wetlands” policy, from the need for environmental restoration, condemnation, and other uses simply overwhelm any pushback farmland protection advocates can provide.

Current programs:

- The USDA Natural Resources Conservation Service (NRCS) is the watchdog agency for tracking the existing Farmland Protection Policy Act. There is a description of the act and of their responsibilities on the NRCS website at: <http://www.nrcs.usda.gov/programs/fppa>.
Contact: Gus Hubanks, NRCS Washington State Conservationist, (509) 323-2900,
Gus.Hughbanks@wa.usda.gov

L. Access to public lands

Public lands represent a huge percentage of the Western U.S. About 1/3 of Washington is public lands. America’s cattle industry, in particular, badly needs access to these lands for grazing livestock. Grazing on public lands is a long-standing practice (not without controversy: <http://www.publiclandsranching.org>), but with proper management, it is beneficial for both the producer and the public. The grazing lease program operated by the U.S. Bureau of Land Management (BLM) is described at: <http://www.blm.gov/wo/st/en/prog/grazing.1.html>. And the Washington Department of Natural Resources program for land leases for agriculture is at: http://www.dnr.wa.gov/BusinessPermits/Topics/LandLeasing/Pages/psl_og_leasing_agriculture_lands.aspx.

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Even where these lands are available to be leased, the steady sale of small properties that increasingly ring the boundaries of existing public lands can create a practical barricade against the movement of cattle from private ranchlands to and from lands leased from public agencies. These adjacent private properties are, of course, in high demand by recreational users who can pay a much higher price than can a rancher. This was one of the reasons for the original formation of the Colorado Cattlemen's Agricultural Land Trust (the first of its kind in the country: <http://www.ccalt.org/>) and is at least partly behind the Washington Cattlemen's consideration of similar action here.

Issues and limitations:

- **Lack of programs:** The various cattlemen's associations have been forced to fight the ongoing political challenges to cattle grazing leases on public lands – so far, pretty effectively. But that struggle is undermined when there is little or nothing in place to maintain the cattle industry's physical access across private property and to slow the conversion of adjacent private lands to small acreage recreational use.
- **Consistency with the public interest:** Public lands, of course, need to serve the interests of a wide variety of constituencies with varied perspectives. Grazing, of course, should be (and is generally required to be) properly managed. Recreational uses can also, at times, be destructive. The public agencies involved need strong, consistent, well-designed policies that protect the public interest and create a predictable framework for private leaseholders.

Current programs:

The Washington Cattlemen's Association has considered the possibility of creating a Washington Cattlemen's Land Trust or of expanding the Oregon Rangelands Trust to include Washington. But, to date, there are no current programs using this approach in Washington. And none that specifically target access to public lands. **Contact:** Jack Field, Executive Director, Washington Cattlemen's Association, (509) 925-9871, jfcattle@kvalley.com; Also contact: Oregon Rangeland Trust, P.O. Box 2000, Pendleton, OR 97801, 541-969-9696.

M. Agricultural districts

Agricultural protection districts are an effort to create voluntary motivation for contiguous farm landowners with substantial collective or individual acreages to create "districts" within which there will be special protections, accommodations, and programs offered to encourage and support agriculture. (See Appendix J – Agricultural District Programs.) The enticements offered can potentially include such things as:

- Eligibility for agricultural economic development grants and technical assistance
- Priority for conservation cost-share assistance
- Access to purchase of development rights programs
- Additional insulation from nuisance litigation under special right to farm laws (See Appendix I – Right to Farm Laws.)
- Special accommodation for some regulatory requirements
- Recognition in marketing direct
- Special agricultural property tax relief
- Possible priorities for water rights transfers

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- Etc.

In exchange for these incentives, there may also be expectations of the landowner – including limitations on the options for development. But, since the programs are voluntary, the incentives need to be sufficiently beneficial to motivate landowners to undertake whatever requirements may be expected in return.

No counties in Washington counties have yet formed agricultural districts and there is no State legislation encouraging them, so there are no real programs of this type here. There have, however, been hybrid ideas in some locations. In King County, for example, farmers receive additional benefits and priorities from County agriculture programs if their farms are located within the GMA farm-zones. King County’s purchase of development rights program was limited to farms within these zones. But, of course, the landowners did not have a choice about their original zoning. In Whatcom County, their original purchase of development rights program established a number of small, contiguous areas eligible for PDR acquisitions. But, again, farmers did not make a choice about whether they would be in these areas.

Jake Anderson of Klickitat County recently proposed a new “Farmland Preservation Zone” that involves a mix of voluntary incentives and cluster zoning. Being in such a “zone” would be entirely voluntary. But if the farmer elected to do so, and if the County agreed, the farm would be subject to different subdivision rules than currently exist in farming areas in the County – much of which calls for 20-acre parcels. Instead, the farmer would be allowed to subdivide off and sell, over time, as much as 20% of the farm in small, 1-2 acre parcels. In exchange, the farmer would retain the balance (80%) of the farm, as a single, contiguous agricultural parcel.

Issues and limitations:

- Lack of programs: Other than a few hybrid ideas and structures like the ones mentioned, there are, so far, no Agricultural Districts in Washington.
- Relationship to GMA zoning: It isn’t clear how, in our Washington GMA setting, agricultural districts might work. Once we have zoned certain areas for agriculture, the inclination is likely to be to provide whatever assistance and support that might be available to all of the farmers within that zone.
- Utility of the idea: The big advantage of Agricultural Districts is their potential for aggregating several motivated landowners together into a contiguous, but still voluntary area that can be targeted for long-term farm protection. This idea, in some form, can be a useful starting point in a search for solutions.

Current programs:

- Other than as described above, there are no current programs using this approach in Washington. **Contacts**: For information about the proposed Klickitat County Agricultural Preservation zone: Jake Anderson, Supervisor, Underwood Conservation District, Member, Washington Farmland Preservation Task Force, (509) 637-4437. For information about King County’s agriculture programs generally: Steve Evans, Agriculture Programs – King County Water and Land Resources Division, 206-296-7824, steve.evans@kingcounty.gov. For information about Whatcom County’s PDR program: Samya Lutz, (360) 676-6970.

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Summary and conclusion:

The above list of approaches to preserving agriculture is not necessarily exhaustive – such a list would be limited only by the creative imagination. It is, however, intended to briefly describe the most commonly used and relied upon ways currently in use for this purpose here in Washington and around the country. This list also does not discuss all of the issues affecting the economic viability of agriculture, issues such as: water, international marketing, energy, business planning, access to labor, research, education, technical support and assistance, freight transportation, a access to markets, etc. The table provided in Appendix A and the outline in Appendix B is designed to help provide an orientation for such issues.

Whatever the Klickitat County community decides, the general lesson from the above materials is that there are many options available for helping farmers succeed and helping them keep their land in agriculture.

Respectfully submitted,

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Options and Issues: APPEDICES

- A. Agricultural business input chart
- B. Agricultural business input outline
- C. Why save farmland
- D. Farmland protection toolbox
- E. Economic development for agriculture
- F. Agricultural easements
- G. Purchase of agricultural conservation easements
- H. Transfer of development rights
- I. Right to farm laws
- J. Agricultural districts
- K. Current use taxation
- L. Agricultural zoning
- M. Cost of community services
- N. Farm estate planning
- O. Environmental regulation