BOARD of COMMISSIONERS
JEFFERSON COUNTY WASHINGTON

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December 14, 2004

Scott Merriman
Washington State Association of Counties
206 10th Ave SE - Suite A
Olympia WA 98501

Dear Mr. Merriman:

Jefferson County is one of the local jurisdictions required to review and, if needed, revise its comprehensive plan and development regulations by December 1, 2004 pursuant to RCW 36.70A.130(4). One of the more controversial and challenging aspects of the update is the inclusion of 'best available science' (BAS) in the refinement of regulatory protections for environmentally critical areas. We wish to share some observations with you about how this process has progressed in Jefferson County this year.

The BAS requirement has presented difficulties for us for a number of reasons. First, Jefferson County is a small jurisdiction, not in geographic size, but in terms of population and level of resource availability. Despite resource constraints, nothing in statute relieves Jefferson County of any responsibility in this update relative to the larger, urban counties. To work on the BAS requirement this year, we utilized a portion of the time of one long-range planner, contracted a former County employee for a basic review of BAS, and hired a consultant for SEPA review of the preliminary proposal. Larger jurisdictions typically have scientific expertise on staff and the ability to dedicate substantial efforts toward an optimal public participation program.

Second, practically no matter what course of action we take with respect to BAS, we expect growth management appeals, from either end of the political spectrum. This is akin to the proverbial Catch-22, as created by author Joseph Heller. We anticipate allocating significant resources next year to the appeal process. Far from having a legal defense team comparable to those of the larger jurisdictions, we have one civil DPA whose job it is to handle land use matters.

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Third, although State guidance is helpful on BAS, the fact that there is ongoing, highly significant activity with respect to the development of BAS puts the 2004 update jurisdictions in a bind. For example, the State Department of Ecology's wetland management guidance is still in draft form, but the agency together with other State agencies and regional interest groups are strongly encouraging us to adopt the 2004 wetland system. We have neither the capacity to evaluate the system in our local context nor to immediately implement it on-the-ground. There are also rumors about a developing State agency consensus on marine shoreline buffers needed to preserve near-shore habitat, but the same rumors indicate that the information will not be available to local jurisdictions until next year or beyond. Until such time as there is solid science concerning the efficacy of particular marine shoreline buffers, the only available science, which is arguably not best, is a weak analogy between marine buffers and salmon-bearing streams. Again, this leaves us with no choice but to guess when establishing our regulations, which is likely to frustrate property owners and developers, as well as the environmental community, and is certain to generate costly GMA appeals.

Thus, local governments like this County are in the Catch-22 of having to guess what is GMA-compliant and yet also suffering from GMA appeals after they make their best estimate because it is sure to dissatisfy either end of the political spectrum. The amorphous nature of what is currently BAS brings to mind a dilemma Yossarian faces in Catch-22 when he can never reach the magic number of missions to be released from combat duty. Told he needs 25 bomber missions to be sent home, he finishes his 25th mission only to find out the magic number has been raised to 30. When he finishes his 30th mission he is told the magic number is 35 and so forth. That is how local governments see BAS.

Similarly, Yossarian in Catch-22 wonders whether to inform the military that he's 'crazy' in order to be excused from flying air missions during World War II. The policy is that crazy pilots should not be flying and all they have to do is ask to be grounded. However, asking to be grounded is evidence of sanity. Yossarian is speaking with the base doctor: "You mean there's a catch?" "Sure there's a catch," Doc Daneeka replied. "Catch-22. Anyone who wants to get out of combat duty isn't really crazy."

If we adopt the higher end of range of recommended wetland, stream and marine shoreline buffers, we will be considered 'crazy' by lot owners and the development community. Conversely, the environmental community considers us 'crazy' for proposing to adopt the lower end of the range of buffers. It is a tricky balance to adopt regulatory protections that do not anger our residents. We're caught between Scylla and Charibdes...and you'd call us crazy if we had asked for this.

Fourth and finally, we understand that the GMA Working Group is in the process of developing new language for the GMA that would influence the applicability of BAS. Ideally, the language of the ***H.E.A.L.*** decision from 1999 which states that BAS must be "substantively considered" should be made part of the BAS statute. The Group is also addressing the issue of the update schedule and level of review of the more rural and slower-growing counties. We wonder how any of these reforms would benefit us, since we are bound to be in appeal processes related to the 2004 update by the time the governor signs any bills in to law.

Sincerely,

Dan Titterness, District #1

Glen Huntingford, District #2

Patrick M. Rodgers, District #3

Cc: Andy McMillan and Gretchen Lux, Department of Ecology
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