



JEFFERSON COUNTY

PLANNING COMMISSION

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To: Board of County Commissioners
From: Planning Commission
Date: April 16, 2003
Subject: Recommendation for Master Land Use Application (MLA) 02-485;
proposed Unified Development Code (UDC) amendments to implement a
Settlement Agreement between Jefferson County and the Washington
Environmental Council (WEC)

The Planning Commission is pleased to transmit its recommendations for MLA02-485. Discussion and deliberations related to these recommendations took place during the following Planning Commission meetings in 2003:

- January 8 meeting
- February 5 public hearing
- February 19 meeting
- March 5 meeting
- March 19 public hearing, including staff slide presentation
- April 2 meeting; included workshop with Jefferson County Conservation District Board
- April 16 meeting

Because of the nature of the comments received at the first public hearing concerning the component of MLA02-485 that involves the regulation of existing and ongoing agriculture, and the subsequent staff memorandum dated February 13 and revised staff proposal dated February 28 for that component of the package, the Planning Commission elected to hold a second public hearing on MLA02-485. Additionally, the Planning Commission invited the Jefferson County Conservation District Board to discuss this proposal and Jefferson County agriculture in general during the April 2 Planning Commission meeting.

For the purpose of communicating the Planning Commission recommendation to the Board, MLA02-485 is separated into three components in this document:

1. *Exemptions to Standard Fish and Wildlife Habitat Area (FWHA) Buffers and Wetland Buffers for Existing and Ongoing Agriculture*

The Planning Commission recommends approval (7 to 1 vote) of the staff revised recommendation dated February 28, 2003, with two amendments. The proposed UDC amendatory language appears here in full, together with explanatory statements and descriptions from the revised staff recommendation:

Step One: UDC Amendment Regarding Agricultural (Ag) Exemption

- Modification of the definition of “Agriculture, Existing and Ongoing” in Section 2 of the UDC:

Agriculture, Existing and Ongoing

Any agricultural activity conducted on lands ~~defined in RCW 84.34.020(2)~~ enrolled in the Open Space Tax Program as Agricultural Land or designated as Agricultural Lands of Long-Term Commercial Significance on the *Comprehensive Plan* Land Use Map; agricultural use ceases when the area on which it is conducted is converted to a non-agricultural use.

- Removal of the General Exemption at 3.6.4.f(1)ii. Refinement of exemptions in 3.6.8 Fish and Wildlife Habitat Areas (specifically 3.6.8.d(3) and (6)) and 3.6.9 Wetlands (specifically 3.6.9.c(1)v).

UDC 3.6.4 Environmentally Sensitive Areas District (ESA), f. General Exemptions

- (1) The following activities are exempt from the requirements of this Section: ...
- ii. ~~Pre-existing and ongoing agricultural activities on lands containing environmentally sensitive areas. For the purpose of this Section, existing and ongoing means that the activity has been conducted within the past five years.~~

UDC 3.6.8 Fish and Wildlife Habitat Areas, d. Exempt Activities.

- (3) ~~Ongoing and existing~~ Existing and ongoing landscaping activities (such as lawn and garden maintenance) and existing and ongoing agricultural activities on lands enrolled in the Open Space Tax Program as Agricultural Land or on lands designated as Agricultural Lands of Long-Term Commercial Significance on the *Comprehensive Plan* Land Use Map. For the purpose of this section, existing and ongoing means that agricultural activities have been conducted¹ within the five-year period leading up to the adoption of Ordinance No. _____ on _____, 2003.²

¹ The word “annually” appeared here in the staff revised recommendation dated February 28, 2003. This is the first of the two amendments made by the Planning Commission.

² The blank date space is reserved for the date of adoption of the amending ordinance associated with MLA02-485, if and when adopted.

- ...
- (6) Harvesting wild crops which do not significantly affect the viability of the wild crop, the function of the Fish and Wildlife Habitat Area or regulated buffer (does not include tilling of soil or alteration of the Fish and Wildlife Habitat Area, except as provided in (3), above).

UDC 3.6.9 Wetlands, c. Exempt Activities, (1) Wetlands.

- v. Existing and ongoing agricultural activities on lands enrolled in the Open Space Tax Program as Agricultural Land or on lands designated as Agricultural Lands of Long-Term Commercial Significance on the *Comprehensive Plan* Land Use Map. For the purpose of this section, existing and ongoing means that agricultural activities have been conducted³ within the five-year period leading up to the adoption of Ordinance No. _____ on _____, 2003.

The result of these amendments would be that all lands either designated as GMA Ag Lands (i.e., lands that are designated/zoned Agricultural Lands of Long-Term Commercial Significance pursuant to the Jefferson County *Comprehensive Plan* and the Growth Management Act—GMA) or enrolled in the Open Space Tax Program as Ag Lands would be exempt from the standard UDC stream and wetland buffers. Fish and Wildlife Habitat Area and Wetland protection would be accomplished through the basin-by-basin riparian management planning process being implemented pursuant to the WEC Settlement Agreement.

Provision 4.1 of the Settlement Agreement concerns limiting the current agricultural exemption. This proposal would limit the current exemption in two ways; the agricultural exemption would apply to only the Fish and Wildlife Habitat Areas and Wetlands sections of the UDC and to only lands that have been committed to commercial agriculture for the long-term, either through the Open Space Tax Program, a GMA Ag Lands designation, or both.

Step Two: Comprehensive Agricultural Lands Policy and Regulation

The Planning Commission and staff strongly recommend that the Board sponsor and support an essential “Step Two” of agricultural lands planning in 2003. Step Two would involve the Planning Commission working with staff to craft a *Comprehensive Plan* amendment and UDC amendment package for submittal into this year’s *Comprehensive Plan* amendment cycle in order to address the following issues:

- Clarification of various Agricultural Lands designations, as defined and regulated in the UDC
- Designation / petition process for Agricultural Lands of Local Significance, including Aquaculture Resources (would involve an outreach program to generate

³ The word “annually” appeared here in the staff revised recommendation dated February 28, 2003. This is the second of the two amendments made by the Planning Commission.

agricultural landowner interest in “opting in” to the Agricultural Lands of Local Significance program per existing *Comprehensive Plan* policy)

- Clarification of UDC regulations as applied to Ag land use districts and reconsideration of allowed and conditional uses per the use table (Table 3-1) (e.g., allow the potential for “farm camps” as schools operating on agricultural lands)
- Completion of UDC Section 4.3 on agricultural best management practices (BMPs), including BMPs for aquaculture
- Other unfinished *Comprehensive Plan* policies and action items

In order for this “window of opportunity” for residents to petition for GMA Ag Land zoning or apply for Open Space—Ag tax status to be effective, there must be a corresponding “grace period” for enforcement of UDC Section 3.6.4 et seq. with regard to landowners practicing agricultural activities on parcels neither designated for agriculture nor enrolled in the Tax Program. Attached to this recommendation is a DCD Administrative Policy DRAFT addressing this issue. The administrative policy described in the attached document should be considered part of the Planning Commission recommendation.

2. *Required Replacement Ratios for Compensatory Wetland Mitigation (UDC Table 3-5)*

The Planning Commission recommends approval (8-0 vote) of the staff recommendation from the original MLA02-485 packet dated September 12, 2002. The substitute Table 3-5 appears here in full, including an amended Note:

3.6.9 Wetlands.

...

f. Mitigation. The overall goal of mitigation shall be no net loss of wetland function, value, and acreage.

...

- (2) **Compensatory Mitigation—General Requirements.** As a condition of any permit or other approval allowing alteration which results in the loss or degradation of regulated wetlands, or as an enforcement action pursuant to Section 10 of this Code, compensatory mitigation shall be required to offset impacts resulting from the actions of the applicant or any Code violator.
- Except persons exempt under this Section, any person who alters or proposes to alter regulated wetlands shall restore or create areas of wetland equivalent to or larger than those altered in order to compensate for wetland losses. The following Table 3-5 specifies the ratios that apply to creation or restoration which is in-kind, on-site, and is accomplished prior to or concurrently with alteration:

Table 3-5. Required Replacement Ratios for Compensatory Wetland Mitigation.

Wetland Category	Replacement Ratio Creation and Restoration ⁽¹⁾	Enhancement ⁽²⁾
I	3 6:1	12:1
II or III		
• Forested	2 3:1	6:1
• Scrub-Shrub	4-5 2:1	4:1
• Emergent	4-5 2:1	4:1
IV	4 1.25:1	2.5:1

Note:

1. The first number in the ratio specifies the acreage of wetlands to be created, and the second number specifies the acreage of wetlands proposed to be altered or lost. The replacement ratios are derived from Department of Ecology Publication No. 97-112 (1998): "How Ecology Regulates Wetlands."
2. Enhancement of existing wetlands, may be considered as compensation; but above ratios must then be doubled.
3. Compensation must be completed prior to wetland destruction, where possible.
4. Compensatory mitigation must follow an approved compensatory mitigation plan pursuant to this section, with the replacement ratios as specified above.
5. Compensatory mitigation must be conducted on property which will be protected and managed to avoid further development or degradation. The applicant or Code violator must provide for long-term preservation of the compensation area.
6. The applicant shall demonstrate sufficient scientific expertise, supervisory capability, and financial resources, including bonding, to carry out the project. The applicant must demonstrate the capability for monitoring the site and making corrections if the project fails to meet projected goals.

3. *State Agency Review of Special Reports Associated with Development Permit Applications*

The Planning Commission recommends approval (8-0 vote) of the following amendments to the UDC per the original MLA02-485 packet dated September 12, 2002:

Section 8 • Permit Application and Review Procedures/SEPA Implementation

8.2 **Project Permit Applications (Type I-IV).**

4. **Referral and Review of Development Permit Applications.** Upon acceptance of a complete application, the Administrator shall do the following:
 - a. Transmit a copy of the application, or appropriate parts of the application, to each affected agency and county department for review and comment, including those agencies responsible for determining compliance with state and federal requirements. The affected agencies and county departments shall have fourteen (14) calendar days to comment, except that State agencies shall have twenty-eight (28) days to comment on special reports per UDC 3.6.4 et al, including Habitat Management Plans and Wetland Mitigation Plans. Affected agencies and county departments are presumed not to have comments if not submitted within the fourteen (14) calendar day period, or twenty-eight (28) calendar day period, as above; provided, that the Administrator may grant an extension of time if needed. Additionally, in the event that the State agency or agencies involved communicate verbally or in writing intention to waive the opportunity to submit comments, the corresponding State agency comment period shall terminate and be so noted in the case file.

Based upon public testimony and based upon formal deliberation concerning MLA02-485, the Planning Commission submits these recommendations for consideration by the Board of County Commissioners.

Thomas C. McNerney
Planning Commission Chair

Cheryl Halvorson
Planning Commission Secretary