



JEFFERSON COUNTY

PLANNING COMMISSION

621 Sheridan Street

Port Townsend, WA 98368

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Minutes of the Critical Areas Committee Meeting
January 4, 2007
WSU Learning Center
Shold Business Park, Spruce Room
201 West Patison
Port Hadlock

Planning Commission members: Jim Hagen, Peter Downey, Henry Werch and Dennis Schultz
Advisory Group members: Al Latham, Amy Hiatt, Bill Wheeler, Cathie Baker, Dennis Holman, Diane Johnson, Dianne Bonnavier-Holman, Dr. Kenneth Brooks, Dr. Robert Crittenden, George Yount, Jill Silver, Jim Tracy, John Richmond, Julie Jaman, L. Katherine Baril, Nancy Stelow, Norman MacLeod, Roger Short, Ron Sikes, and Sandy Hershelman.
Staff: Brent Butler and Cheryl Halvorson

Summary:

The Planning Commission Critical Areas Committee meeting was called to order in the Spruce Room at the WSU Learning Center at 7:00 pm by Chair Jim Hagen. Planning Commission members present were Peter Downey, Dennis Schultz, Jim Hagen and Henry Werch. Advisory Group members present were Al Latham, Amy Hiatt, Bill Wheeler, Dennis Holman, Diane Johnson, Dr. Kenneth Brooks, Dr. Robert Crittenden, George Yount, Jill Silver, Jim Tracy, John Richmond, L. Katherine Baril, Norman MacLeod, Roger Short, and Ron Sikes.

There were about 35 members of the public present. Those who signed the guest list were: James Fritz, Terri Jeffreys, Jim and Pam Morgan, Ken Ward, Don Ward, Teren MacLeod, Jim and Sallie Porter, Bob and Gloria Allingham, D. Honaker, K. Brown, Lawrence Dimino, John Gieser, Richard Hild, Judi Stewart, Mike Belenski, Wayne King, Jim Pruett, F. H. Brewer, and Claud and Virginia Crandall.

The group briefly discussed the need to change the meeting location beginning on January 18. There was little support for changing the day of the week. The group discussed other locations. The secretary reviewed her findings. Other suggestions were the Port Townsend or Chimacum High Schools or Quimper Grange. Katherine Baril said she would see if they could work something out at WSU. The secretary said she would continue looking.

Public comment was opened. James Fritz commented on the amount of talent on the committee. It was very important that we come up with something that the people could accept. He spoke about the boom and bust times in the economy of the county, saying he thought we were heading for a bust period. That required everyone to work together.

Sub-Group Reports (written reports were presented for each subgroup):

Al Latham provided a summary of the Agriculture Subgroup's report. One option was to retain the exemptions for agriculture. The other option was to get rid of the exemption. He discussed the impacts on the county. They had not re-defined the term "existing and ongoing agriculture". There was an issue with new agriculture or existing small agriculture that was not currently included in the current definition and designations. He discussed at what times a farm plan would be required. He pointed out that most of our prime ag areas were in wetland or stream critical areas. He discussed the Island County ordinance, which has been appealed again so is not in effect. He described the differences between the current Jefferson County exemptions in the ordinance and the Island County ag ordinance. He described the water quality monitoring program the Conservation District had done since 1988, noting that Island County would be starting from scratch.

Roger Short thought we were still unclear about how we would handle new agriculture. We had not had much input from the environmental community on the ag proposal. Al Latham stated that WEC had essentially endorsed the voluntary protection program through the Settlement Agreement because of the improvements that had been obtained through the voluntary programs of the Conservation District.

Jill Silver said the ag subgroup had done a good job of clarifying and comparing. From the minority perspective, there were no substantive changes other than to resolve that 2003 date and how to deal with new agriculture starting since then and how to support them. The ideas were starting to form and it would be worthwhile to discuss alternative concepts for small rural residential ag.

Dr. Robert Crittenden provided the subgroup report on Channel Migration Zones. The subgroup concluded that there was no mandate requiring the county to address CMZs under the GMA or the implementing WACs unless the county wished to do so voluntarily. Where the issue was found was under the Shoreline Management Act through the local Shoreline Master Program. Therefore, the subgroup concluded that the CAO was not the proper place to regulate the CMZs. He noted that the WEC Settlement Agreement mentioned that the county must consider CMZs. The majority recommendation of the subgroup was that we had considered it but the conclusion was that the SMP was the proper place to address CMZs.

Jill Silver provided a minority report on CMZs, explaining their reasoning for including CMZs in the CAO. They advocated that we not put future development in those zones. They were not proposing that we further impact those people who owned property and had development in those zones already because they were impacted enough already. They did not think public infrastructure should be put in CMZs.

Norm MacLeod asked what would happen if someone owned and lived on land in a CMZ and wanted to build a house for a family member. Jill Silver replied that it was a difficult situation that should be discussed. She understood that people had needs, although she did not advocate allowing new development in CMZs. She pointed out that there was currently the ability to allow such development in critical areas under special circumstances. Brent Butler explained the FEMA guidance for special flood hazard areas. Amy Hiatt referred to current regulations addressing allowing additional modifications to existing development as long as it did not increase the degree of nonconformity. She was not sure how that could be addressed in the CMZ issue.

Bill Wheeler asked if the minority was advocating that the CAO apply to both the public and the county, which currently had an exemption for its infrastructure. Jill Silver said that they did not recommend building any infrastructure in CMZs because it cost the public money to protect it and it caused environmental damage. She would recommend changing the current exemption that the county enjoyed.

Dr. Kenn Brooks discussed the need to understand the implications of regulating CMZs. He described a scenario using a 150-foot buffer from the edge of the CMZ. He provided an actual example he had experience with in Eastern Washington for an oxbow in a river where the river wanted to cut through the oxbow.

John Richmond, who owned property on the Hoh River, described the meander of the Hoh and how easy it might be for the river to change. It was critical to identify where the hard points were on such rivers in order to protect the adjoining lands. With proper and careful use of natural materials, the land could be protected. He thought the ordinance could be crafted to provide such protections.

Norm MacLeod said there was a lot more to consider than that the river goes back and forth. If we prohibited any development in the CMZs, then everything would stop.

Dennis Schultz provided an overview of the Fish and Wildlife Habitat Conservation Areas Subgroup. Their report had been handed out at an earlier meeting. There currently were no listings for species of local importance in this county. Their proposal suggested a method for nominating and designating a species of local importance. The onus was on the proponent to provide the complete package to nominate and designate such species, including a monitoring plan. DCD would review the package for completeness. Then it would go through a public review process before the Planning Commission and eventually the BOCC, just like any land use action. It was similar to the procedures adopted by several other counties.

Bill Wheeler said that the second part of the report was that there was currently no requirement for wildlife habitat buffers other than what existed in the Forest Practices Act and what we currently had in the county ordinance for protection of riparian zones. The subgroup thought those protections were enough. Dennis Schultz said that Dr. Brooks would talk more about wildlife buffers in his presentation.

Jill Silver referred to the Whatcom County ordinance which included a complete species list, including the WDFW identified species list. There was also some buffer ranges and risks and hazards provided. She suggested some comparisons to other counties that were relevant to our ecological circumstances. Dennis Schultz said that we had few Endangered Species listed and they were already protected by regulations for those endangered species. Bill Wheeler said that federal and state regulations applied to listed Threatened or Endangered Species, so the subgroup did not want to add another layer and instead defer to the state and/or federal regulations. Ms. Silver thought those references should be in the CAO so they were readily available to the applicants and permit reviewers. Mr. Schultz said that the county was required to review that in those circumstances and then require and make the property owner follow the federal or state guidelines for the specific species.

Henry Werch began the Buffers minority report for the Buffers Subgroup. The minority advocated relying on the basis of the parameters outlined by the DOE but would not contain many of the things the public found fearful or punitive. They advocated taking advantage of the real flexibility that the DOE offered to come up with a reasonable, rational approach they thought would ultimately cost the county less and that would better protect the environment. They thought it was better to over-protect and see what happened rather than to under-protect and run the risk of experiencing losses that we could not mitigate. Amy Hiatt referred to the new approaches to accommodate new ag lands and uses. Jill Silver said that what they were trying to accomplish was an ordinance that was more user friendly for the public and that represented a balance between property rights and environmental protection.

Dr. Kenn Brooks presented the majority report for the Buffers Subgroup. He referred to a question about his experience and ability to assess and understand the science dealing with populations of animals and vigorously defended his experience and expertise, citing his experience on state, national, and international groups on just such matters as well as his extensive published research. The majority thought, based upon Hearings Board decisions, that we had a great deal of latitude in developing an ordinance that was appropriate locally. The only real requirement of the ordinance was that it function in a demonstrable way that we were protecting the functions and values of the watershed. We were not required to do any enhancement or to return the features to the way they were a 100 years ago. We were required to protect the existing functions and values. However, where we wanted to deviate from the DOE guidance, we had to produce substantiating arguments that were logical and science that supported the deviations we intended to make. In that effort, he reviewed the best available science produced by DOE and to synthesize a document that would provide guidance for development of a CAO for this county. The majority report contained the rationale for minimum buffers. He cited a Western Hearings Board case in Skagit County brought by WEC and the Swinomish Tribe relating to agricultural uses in which the petitioners contended that all salmon bearing streams should have 300-foot buffers regardless of their size. The HB decided against the petitioners. The HB said that it was inappropriate to impose restrictions on a property owner unless there was a showing of harm. In other words, you could set a minimum buffer and that minimum buffer was fine until or unless there was an actual showing of harm.

Dr. Brooks said that he was a strong property rights advocate, but that did not mean that there were not acceptable limitations on property. He did not believe a person had a right to diminish through his actions the value or enjoyment of adjacent property or to pollute surface water. He said that comments from the minority members of the subgroup were provided to him and he answered them in an email of this date. Hard copies were provided at this meeting.

Dr. Brooks described the functions of wetlands. He supported minimum buffers in the majority paper. The published research cited had been peer reviewed, although it was not included in the DOE BAS guidance document. The recommendations were not designed to create significant risk to water quality functions, hydrologic functions, or wildlife. They were designed to protect those values and at the same time to respect peoples' property rights.

Dr. Brooks said that there were some hazard multipliers and some multipliers which recognized the overall functions and values of wetlands. Those were the only two steps that were required. He referred to an Excel worksheet that would transform the DOE required wetland rating system into buffers. The proposed buffer distances ranged from one foot for very low value wetlands. In Jefferson County, we had few Class 1 and 2 wetlands, but they were the best in terms of habitat value and should have more protection. Most of our wetlands were Class 3 and 4 that had very low habitat value. He supported the DOE buffers for Class 1 and 2 wetlands but differed substantively on the Class 3's and 4's. He proposed residential best management practices that would allow a land owner to reduce the buffers by half. They proposed an educational and incentive component for a voluntary wildlife enhancement program. In his experience, if we adopted very onerous regulations, we would create a county of residential law breakers. He said that in the end, the decisions on the CAO would be political decisions.

Jim Hagen noted that it would cost the county thousands of dollars if it were to hire Dr. Brooks for the work he had contributed to this effort. He thanked the members of the public, stating that it was because of the public's input that this committee was formed.

Norm MacLeod offered the opinion that there was a misunderstanding in the minority report that an alternative program would require the approval of DOE wetland specialists. He said that what the Settlement Agreement actually said was that any alternatives departing from Volume II "shall be developed through consultation with DOE wetland specialists." Based upon his experience with senior leadership at DOE, he believed that DOE would welcome Dr. Brooks' work and analysis and would allow us to use it.

Dr. Crittenden asked that the buffers minority consider the report of the fish and wildlife subgroup. He thought the process identified presented some legal problems that should be considered. He discussed a question he had raised about vested rights.

Henry Werch commented on this process which allowed everyone to express their differing views. As a group, we should try to reach the greatest areas of agreement, while recognizing that there would be areas of disagreement. However, he commended the process that respected the differing viewpoints.

Peter Downey provided an overview of SHB 1933 and the interaction between the Shoreline Management Act and the CAO and what that might mean for Jefferson County. We should keep in mind that a designated shoreline did not automatically get designated as a critical area. While we were identifying critical areas under the CAO, if that critical area was located within a shoreline, then it was incumbent upon the Shoreline Master Plan to regulate it. If we had a flood hazard zone on a river that was defined as a critical area and was in the shoreline jurisdiction, it would be regulated under the SMP. So any critical areas that were defined that were also within the shoreline jurisdiction would automatically get bumped to the SMP for how they would be regulated. There were two different mechanisms for best available science under critical areas and no net loss of ecological functions under shorelines. The two were not necessarily the same thing. If a critical area was in the shoreline jurisdiction, the SMP must provide the same level of protection for that critical area as would be found within the normal CAO. What that meant for Jefferson County was that, under the SMA, there was a specific exemption for agriculture. If you had areas within the shoreline that you did not define as critical areas but you wanted to have some protection as critical habitat under shorelines, there would be an ag exemption under shorelines. You

could not regulate that under shorelines. The big question was how it applied to aquaculture. Aquaculture was not exempt under the SMA. It was questionable whether it was included in agriculture. At the same time, there were some aquaculture lands that required some level of protection, either under fish and wildlife habitat areas or some other mechanism. So we needed to be very careful about how we set up protections if we wanted to protect aquaculture. He thought it was best left to the shorelines program to figure out and not deal with it too much in the CAO other than to note that as we defined critical areas within the shoreline jurisdiction, they would be regulated under the SMP.

Dr. Crittenden pointed out that the SMA requirement was “no net loss”, so you could have different regulations in the SMP than you would have in the CAO, but the SMP must be at least the same as the CAO, if not more strict.

Jim Tracy said that the reason this was brought to the fore was the inclusion in the draft CAO of language that blanket designated all marine shorelines as critical areas, in facial conflict with SHB 1933. He thought it was much more important for the SMP development and was not as important for the CA Committee. He noted that the SMP had, in fact, the legislative authority to establish more stringent regulations for not just GMA identified critical areas but other critical areas as well. Concerning fin fish aquaculture, he asked what authority the county or state had to regulate or monitor that use. Peter Downey replied that he did not think the CAO had any authority; it would fall under the SMA.

Dennis Holman provided the real estate sector’s viewpoint. Any regulation needed to be clear and concise. He referred to a position paper prepared by the Governmental Affairs Committee and read portions of it.

Public comments:

Lawrence Dimino said his piece of property in the woods in Brinnon was his dream. He addressed the CAO update from 2003 that changed the impacts on his land. While he understood there was a need to protect critical areas, there were also property rights under the Constitution. He proposed setting up a sustainable resource center and education center. He heard a lot about guidelines but he wanted to know where the laws were that supported those guidelines which allowed regulations. He proposed that the state provide a grant to set up a sustainable resource and education center as a pilot project in this county. He thought there were some serious eminent domain issues with this CAO. He wondered whether the county was going to reassess property values because there would be properties adversely impacted by these regulations. He wanted to work together to do something positive.

Richard Hild thanked Dr. Brooks for all the work he had done for this committee. It was a major gift to this county that should not be shortchanged in any way.

Teren MacLeod thanked everyone on the committee for their work. She hoped this effort would craft an ordinance that would protect both property rights and the environment. One thing that was clear to her was that there were many areas of overlapping of regulations. She thought the committee should be cognizant of that overlapping issue. It would be a big help to any entity dealing with the regulations. Concerning CMZs, it appeared that FEMA would take precedence for special hazard areas. She thought that government had to demonstrate that there was some harm before imposing regulations that were so prescriptive to property rights and values. What we should want to create was education, incentive and voluntary compliance. There should be the same option for BMPs for rural residential as there was for agricultural lands. She said that there were small working farms that supported our Farmers Market that were not necessarily zoned agriculture.

Katherine Baril thought we were doing agriculture no favor by creating pre-date and post-date ag and creating two different kinds of agriculture. The issue was the function of agriculture and not when lands were brought into agricultural use. WSU has had over 70 people complete their new farm training. She cited some figures on how much farming contributed to the county’s economy. Of the 15 farmers she looked at, only two were on designated ag land. She thought there were other ways to look at stewardship plans, farm plans, and not just look at a specific date. Second, there was a very liberal vesting law in this state. A concern she had heard was, once you had your land in one of the vested categories, what was the process and how were you treated during the permitting process? We had to

talk about the capacity of the county to implement this regulation once it was passed. We had to recognize that we, in fact, had an Environmental Learning Center in this county for about 25 years. But it took funding to staff it in order to do education.

Wayne King, PUD #1 Commissioner, said his comments were both personal and as a PUD Commissioner. He considered himself an environmentalist. He said the PUD spent over a million dollars on environmental issues and lawsuits for the Marrowstone project. It was the peoples' money. He related information on plans for a sewage treatment plant for the Dosewallips State Park. He saw too many people who wanted to get involved for all the wrong reasons; they wanted to stop everything. He thought the committee had done a tremendous job and particularly cited Dr. Brooks' work. He questioned how we could keep going without infrastructure.

Ron Gregory expressed concern about the attempt to characterize this issue as left wing or right wing. This was about protecting our Constitutional rights. We needed to avoid enhancing the "nanny state". At some point we had to ask who was getting the benefit of this. If it was a fairness issue, we should look at it in that light. It was not a conservative or liberal issue. He perceived very little benefit in what we were doing here. We needed common sense regulations.

Mike Belenski thanked the people in the room but also thanked the other people who had been active in the community over this issue, citing the folks with the tractors at the Courthouse in June. He thought this exercise was light years ahead of what had come before because it was open, honest public debate. He agreed that it would be a political decision. He agreed with the other members of the public who had spoken, particularly citing the comments about there being proven harm before regulations were mandated. He especially supported Dr. Brooks' presentation, which he thought was very heartfelt. He thought it was very good that he cited science to support his position.

Denver Shoop said that, as a landowner, he wanted to know if he was doing something wrong and he would fix it. But the county should not put regulations on him and tell him he could not do something just because you wanted to do it.

In response to a citizen request, staff indicated that they would scan the documents presented tonight and make them available on the Critical Areas web site.

The next meeting will be devoted to a discussion of the subgroup reports. There was a discussion about whether to vote on the reports at the next meeting in order to move forward toward drafting code language. It was agreed that the committee add the idea to the next agenda, discuss it further, and vote on it then.

Roger Short asked if there would be a consultant or staff assigned and charged with writing the actual code language. That person should be attending the next meetings in order to facilitate that work effort. Jim Hagen suggested the issue be brought up at the next meeting. He said he was willing to talk with Al Scalf about the logistics.

The meeting was adjourned at 10:00 p.m.