



JEFFERSON COUNTY

PLANNING COMMISSION

621 Sheridan Street

Port Townsend, WA 98368

(360) 379-4450

Notes for the Critical Areas Committee Meeting

April 5, 2007

WSU Learning Center

Shold Business Park, Spruce Room

Port Hadlock, WA

Planning Commission members: Bud Schindler, Peter Downey, Henry Werch and Mike Whittaker (Edel Sokol, alternate)

Advisory Group members: Al Latham, Amy Hiatt, Bill Wheeler, Cathie Baker, Dennis Schultz, Dr. Diane Johnson, Dianne Bonnavier-Holman (alternate), Dr. Kenneth Brooks, Dr. Robert Crittenden, George Yount, Jill Silver, Jim Hagen, Jim Tracy, John Richmond, John Boulton (alternate), Julie Jaman (alternate), Kathy Dickson (alternate), L. Katherine Baril, Nancy Stelow, Norman MacLeod, Roger Short, Ron Sikes, and Sandy Hershelman.

Staff: Brent Butler and Cheryl Halvorson

The Planning Commission Critical Areas Committee meeting was called to order at the WSU Learning Center, Spruce Room, at 7:00 pm by Chair Bud Schindler. Planning Commission members present were Bud Schindler, Mike Whittaker, Peter Downey and Edel Sokol. Advisory Group members present were Al Latham, Amy Hiatt, Bill Wheeler, Dennis Schultz, Dr. Diane Johnson, Dr. Kenneth Brooks, Dr. Robert Crittenden, Jill Silver, Jim Hagen, Jim Tracy, Kathy Dickson, Nancy Stelow, Norman MacLeod, and Sandy Hershelman.

DCD staff present were Brent Butler and Cheryl Halvorson.

There were about 12 members of the public present. Those who signed the guest list were: Clark Crandall, Virginia Crandall, Rose Hare, and Klaus Hintermayr.

Staff Report:

Brent Butler reported on the BOCC/Planning Commission workshop of April 4 for the 2007 Comp Plan amendment introductions. Also discussed at the workshop was a letter from Bud Schindler to the Planning Commission relating to the critical area issue. Bud Schindler summarized the contents of the letter. One significant issue was the issue of the code writer and who he would work for. Mr. Schindler reported on the statement by County Administrator John Fischbach that the code writer would not work for the committee but would work for the Planning Commission. He was asked to find out when that decision was made and by whom.

The committee discussed their reports. Jim Tracy offered the opinion that anyone could offer written testimony during the Planning Commission public review process. Peter Downey said that, as it stood now, the Planning Commission motion would require at least one signature of a Planning Commission member and two committee members on the committee's reports.

Public Comment:

There were none received.

Review and Possible Approval of Committee Agriculture Code (cont.):

The committee worked from a draft headed "18.f.i (Overlay Zones) Critical Area Identification and Standards" and dated 3/30/2007. Using computer projections onto a screen, Al Latham reviewed the draft, stating that it was a blend of the Jefferson County and Island County codes and the Chimacum Watershed Plan. He pointed out the changes he had made at the committee's instruction. One was to delete the references to "existing and ongoing" agriculture. He recorded the amendments as the committee progressed with its review.

Page 1: Al Latham explained that the top portion of the page was what would appear in the critical areas ordinance section of the JCC. It would defer to the Agriculture section for ag zoned lands and leave only agriculture in the rural residential zones in the critical areas section of the code. There would be no ag exemptions for the rural residential ag uses. Beginning at "18.20.030 Agricultural activities and accessory uses" was the main portion of the Ag code, beginning with a preamble section. Mr. Latham explained that "new agriculture" was covered in this section.

The committee accepted Page 1 of the Ag draft with fourteen in favor and two abstentions (14-0-2).

Page 2: The committee discussed the specific date contained in (1)(d) at the bottom of the page. The committee agreed to use "2005 DNR Aerial Photography" because that was the latest available material. Alternatively, the committee discussed using "the most recent" instead. That raised a discussion about the baseline against which you would measure existing conditions. Kenn Brooks said it should be made clear what the baseline report was because the Hearings Board had found that you cannot further degrade water quality from an established baseline. Mr. Latham said that the most recent report was the 1988-89 report data. He discussed the other water quality reports that may be used as the baseline. There were reports done in 1988-89 and another for 2001-03. In addition, there will be a new one coming out for 2005-07. The committee agreed to use 2005 for the DNR aerial photos contained in (d) at the bottom of Page 2. Peter Downey wondered why you had to have a baseline. Dr. Brooks explained that the reason you needed a baseline was to measure whether there was an exceedence of water quality. There are two performance standards. One was the state water quality standards. The other was the baseline data established on a certain date. Brent Butler pointed out that the GMA was based upon the built environment in July, 1990. That was our land use baseline upon which we update the Comp Plan. Mr. Downey was not certain that we had to establish a baseline date for critical areas, stating that it was a legal question we should have answered. He knew that the standard was different under the SMP. It was not best available science like critical areas; it was no net loss of ecological functions. Dr. Brooks countered that, whether we have to or not, we should want to establish a baseline because, otherwise, we would place our citizens in jeopardy. Mr. Latham agreed, saying that some of the water quality standards are so high that we could never meet them. Using data for say the 2001-03 report would show what the status quo was right now and we don't want to get worse than that. Since our Ag ordinance was based on voluntary compliance followed by regulatory standards, we needed a baseline for the regulatory aspect of it to take effect.

The committee accepted Page 2, as amended, with thirteen in favor and three abstentions (13-0-3).

Page 3: The committee agreed to change Paragraph (2) at the top of the page to read "... agriculture are required to comply with the requirements of Sections 3.6.8 and ..." and to delete "standard stream and wetland buffers as described in". They also agreed to delete the last sentence of the second paragraph under (2).

Under 18.20.030.1 Background on Page 3, the committee agreed to delete the reference to "fish and wildlife habitat" in the first sentence in the first paragraph. They also agreed to add "potentially" in the last sentence of that paragraph and delete "salmonids" so the sentence will read "While potentially detrimental to some fish and wildlife, the agricultural land use in the watersheds also provides habitat for many wildlife species, including ..."

Page 3 was accepted as amended with thirteen in favor and three abstentions (13-0-3).

Page 4: The committee discussed the open range and elk issues contained in the first full paragraph at the top of the page and agreed on some changes.

Page 4, Maintaining Agriculture and Protecting Critical Areas, Fish and Wildlife Habitat: The committee discussed the words “fish and wildlife” and agreed to delete the words because they were part of critical areas.

The committee discussed the sentence about “pre-European settlement conditions” and agreed to delete the entire sentence. Kenn Brooks said that the Hearings Board had ruled that the goals of the GMA do not require us to do either enhancement or restoration.

The committee discussed the fact that the material on Pages 1 through 5 was narrative, not regulatory, that should not be in an ordinance. They agreed that it should be in the findings of fact that will accompany the draft ordinance.

The committee discussed the “performance based” meaning in the last paragraph on Page 4 and the top of Page 5. They agreed to change the sentence to reflect a reference to the WAC water quality standards and/or baseline data defined in the Conservation District reports.

The committee discussed the second paragraph under “Maintaining Agriculture” on Page 4 where it talked about the coho salmon stocks being healthy. They agreed to put a placeholder and question mark at the SASSI 1992 reference. Jim Tracy said that the statement that the species were not in jeopardy was a different standard than what is required by critical areas regulations. He said the statute was changed such that “counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries”. He said it had not been litigated, but the term “special consideration” was problematic in that we had a ruling that we don’t have to do enhancement or restoration, although this section of the law said “preserve or enhance”. Peter Downey suggested that another term be used instead of “in jeopardy”.

The committee accepted all of Page 4 and the top of Page 5, as amended, with fifteen in favor and one abstention (15-0-1). It was noted that the committee had agreed by consensus to move the preamble material to the findings of fact.

Page 5 beginning at 18.20.030 Agricultural activities and accessory uses: The committee discussed the Definitions.

(b) Agricultural Activities: The committee agreed to change the last sentence to say “... agricultural land used to lie dormant and that is enrolled in a local, ...”

(e) Agricultural Lands: The committee agreed to rely on this definition to define Agriculture and to delete (g) Existing and Ongoing Agriculture. They agreed to change the definition of (h) New Agriculture to state only “New agriculture is the conversion of land to agricultural operations after implementation of this ordinance”.

The committee discussed the Low and Medium Intensity Agriculture definitions. There was considerable sentiment expressed that the animal unit per acre numbers were not practical, especially for this county. The committee agreed to table the definitions for the intensities until they saw how the terms were used in the rest of the ordinance.

(E) on Page 8 regarding water quality monitoring: The committee discussed the section. At issue was that the wording was not regulatory in nature; it was more policy language for the Comp Plan. It was agreed that (E) should be deleted with the last part reference to “(See _____)” being moved to the end of (D) above. The committee discussed developing a separate monitoring program within the ordinance.

The committee agreed to delete the phrase “such as wetlands and fish and wildlife habitat areas” in (C) on Page 8.

The entire section from Page 5 through the top half of Page 8, as amended, was accepted with thirteen in favor and three abstentions (13-0-3).

(iii) Agricultural Best Management Practices on Page 8: The committee agreed to delete the October 1, 1998, date from (5) on Page 9 and change it to "... on or before enactment of this ordinance shall ...". The committee agreed to delete the phrase "fish and wildlife habitat in and adjacent to streams and wetlands" in the paragraph under (iii) and replace it with "critical areas" on Page 8. Under (III) on Page 8, the committee agreed to add "and TIPS Guide" after "A Standard Farm Management Plan".

Concerning (2) at the top of Page 9, Kenn Brooks was in favor of sticking with performance standards instead of operating standards like this. Also at issue was that the word "contributing" was too vague.

Due to the hour, it was suggested that a small group of committee members meet informally to finish the review of the Ag section. At issue was completing the committee's reports before May 2. The committee agreed to use an informal group to finish the Ag section.

The committee accepted the section of (iii) to the bottom of Page 8, as amended, with thirteen in favor and three abstentions (13-0-3).

Revisit Cannel Migration Zone Direction

Bill Wheeler raised the issue of the committee reconsidering the CMZ issue. The committee agreed to discuss reconsidering the majority report. Robert Crittenden explained why the majority of the CMZ sub-group decided not to address CMZs in the critical areas ordinance. Mr. Wheeler explained his reasons for raising the issue for reconsideration. Jim Hagen explained that Planning Commission committees were generally used for information gathering and making a recommendation to the full Planning Commission. It was not that unusual for a committee to reconsider an issue and to even change its initial recommendation. While there were a lot of things that seemed to be obvious, we were also dealing with bureaucratic realities. The committee agreed to reconsider the CMZ issue with eight in favor, six opposed, and two abstentions (8-6-2).

Kenn Brooks said that it was clear from the evidence that we put ourselves in danger by not addressing the issue, although he was not suggesting we regulate CMZs. He said we had to present cogent arguments about why we should not regulate CMZs. The committee had not done that. The committee had asked staff to provide information on other state and federal regulations that applied to CMZs, but the information had not yet been provided. He thought that information would provide a basis for the committee saying that CMZs were adequately regulated already.

Norm MacLeod read the portion of the WEC Settlement Agreement that addressed the county regulating CMZs. He reiterated that the committee had asked several times for a simple list of other state, federal and local regulations addressing CMZs as a means of knowing whether the current regulatory framework was sufficiently protective. He thought it might actually be the most restrictive in the county, but he had no way of knowing until he had a list of the regulations to look at. He again asked for that list. He was fundamentally opposed to having to buffer a zone that could potentially be a mile wide.

Brent Butler referred to two plans and studies that were never adopted and two that were adopted (the Emergency Management Plan and the Multi-Hazard Mitigation Plan). He explained the safety issues with the development that was occurring in the floodplains (CMZs).

Jim Tracy countered that the issue was whether CMZs should be regulated as critical areas under the ordinance. He said that there is no quantification of specific information; staff only suspected that there was a concern. But staff was proposing that we adopt regulations to address a problem that had not been proven to be a problem. He said that the GMA required us to adopt regulations that addressed identified problems or identified harm. He thought the committee's report did present a cogent basis upon which this committee can decide not to propose CMZs as a critical area. That did not prevent the Planning Commission from proposing them. It did not prevent the BOCC from proposing them. What it does do is set up another fundamental principle about establishing what the BOCC can do which is discretionary versus what is required by law. There are critical areas within the CMZs that are already regulated. Plus there were the FEMA regulations. There was no rationale for this committee, in his opinion, to recommend adoption of CMZ regulations as a critical area.

Bill Wheeler said that his concern was that CMZs may end up in the final ordinance anyway. His concern was not how they were regulated, but how they were defined and delineated. If the committee does not write it, somebody else will. If the committee did not make an attempt, then it gave up all influence the committee might have on the issue.

Diane Johnson asked if those houses that were being developed in the floodplains were being regulated already, by FEMA or something else. Brent Butler replied that the FEMA regulations were limited to the 100 year floodplain, while the CMZ may go well outside the 100 year floodplain, including up to the 500 year floodplain. Dr. Johnson offered the opinion that the CMZ itself provided a buffer to the river, but we were being asked to provide an additional buffer to the CMZ.

Norm MacLeod referred to the letter the committee received on March 22 which indicated CMZs as fish and wildlife habitat conservation areas [F&WLHCA]. He said that a significant portion of our very productive farm lands were in CMZs. The CMZ could essentially cover the entire valley floor in some cases. There were people who lived there. Using the CMZs, we could potentially have the entire valley floor being a F&WLHCA. He referred to a motion that was tabled at the Quilcene meeting that we not do CMZ regulations until every parcel owner in those CMZs was notified by letter and have an opportunity to participate in that process. That motion could be revived at any moment. If we were only talking about public safety, it was one thing; that was one bookend. The other bookend takes in the entire range of anything anyone could do. The other critical areas regulations applied to the CMZs already. We needed to understand the full range of what we were talking about when we considered the desire the WEC placed in the Settlement Agreement.

Robert Crittenden addressed the 100 year and 500 year floodplains. He said that we should not be solving the hydraulic problems of water storage and discharge through our critical areas regulations because the floodplains were not delineated correctly.

Jill Silver agreed that the 100 year floodplains were not correctly mapped. She clarified that the intent of including the CMZs in the F&WLHCAs section of the critical areas ordinance was not to undo peoples' existing land use within the CMZs. So existing homes, roads and agriculture would remain. It was intended to encourage no further harm to salmon and wildlife habitat, and flood storage, and to reduce the human safety danger. She explained the problem with migrating rivers taking out buffers when they moved over. You cannot maintain buffers in CMZs over time. Therefore, it was important that you designate that entire area for no further harm.

Jim Tracy addressed the human safety issue, stating that our building requirements in the 100 year floodplains were for building permit purposes. That only addressed the human safety issue and not the wildlife habitat element. He agreed that the attempt to regulate CMZs in the critical areas ordinance was to address general wildlife habitat conservation, not critical areas F&WLHCAs, and that was not required by the statute.

Amy Hiatt thought there was a difference between rising water and a stream that would change its course. Her contention was that we should not have buildings in a place where the river is likely to move to.

Bill Wheeler said that the county had adopted the International Building Code which had provisions for building in the floodplains. It also required that the county identify the floodplains. He discussed the King County regulations on CMZs, which were directed towards protecting life and property. The basic issue was whether we address it from that point of view or from the fish and wildlife point of view. There were counties in Western Washington that had taken each of those approaches and some that have not taken any approach at all.

Kenn Brooks referred to two documents handed out at this meeting. One was his response to the DOE review of his supplemental best available science [BAS] document. He asserted that the examination of the studies included in the DOE BAS found that not only did they not support DOE's assertions but that they actually contradicted DOE's assertions. That brings into question the entire credibility of DOE's BAS. He said they were now calling upon the legislature to form a committee of credible scientists to examine DOE's documents to determine whether they in fact exhibit BAS. The other document was the supplemental BAS supporting recommendations for buffer widths in this county which had been

significantly expanded. He included several pages describing what the legislature needed to do to clarify what is meant by "protect fish and wildlife habitat" because the current definition was far too vague. He reported on a conversation with the executive director of the Conservation Commission who said that DOE and WDFW were confronted by angry people from other state and federal agencies at meetings contradicting their science. His recommendation was to convince our BOCC that they have a lot of latitude and that there was nothing that bound them to DOE's BAS. He reported that many of our southern counties were now going to the other extreme and providing almost no protection for critical areas. Dr. Brooks said that his point was that if the BOCC imposes the May, 2006, onerous ordinance on us, they would do so because they want to and not because they are required to do so. Dr. Brooks referred to the letter from Gus Eubanks extolling the efficacy and appropriateness and successes of the kind of voluntary stewardship program he had been advocating and the inappropriateness and failures of the regulatory approach. Whether the committee prevailed with the BOCC or not, he thought it would enable us to prevail in the courts, because all of this would be in the record.

Peter Downey thought what we had were fish and wildlife buffers for fish and wildlife critical areas and flood hazard areas and buffers for them. If we were to do something for CMZs, he thought it should be only for the protection of flood hazard areas, not for protection of wildlife. If we are going to protect wildlife, it should be done specifically for the protection of wildlife. If we're really worried about protecting structures, we should protect structures. It might be acceptable to have pastureland in a CMZ knowing that it might get wiped out. We needed to be really specific and pertinent to what we were trying to protect.

Sandy Hershelman asked Mr. Wheeler about the other Western Washington counties with large rivers (Cowlitz, Island, Lewis counties). Bill Wheeler replied that those counties had no CMZ regulations.

Jim Tracy discussed the Island County ordinance in terms of CMZs. He said the real question before this committee was whether or not the committee thought CMZs were a mandated requirement for critical areas ordinances. Some counties chose not to take on the issue and some did. The majority report that was prepared set out conditions that the committee thought warranted no critical areas regulations of CMZs. If the Planning Commission and/or BOCC chose to add such regulations, they would have to include the rationale to justify it.

Jill Silver agreed that fish and wildlife habitat or geologic hazards should be the focus of CMZ protection in a critical areas ordinance. She discussed the buffers on a stream as being based on the tree heights of the trees bordering the stream. She said that rivers migrated through the buffers, however. She said that 20 year old trees in the buffer zone would not afford much protection, while 300 year old trees would offer more protection. But you cannot tell where a river is going to go. When it moves, the whole successional process starts over again. The river does not stay in one spot and the buffer keeps growing as the river moves. She said the time frame is unpredictable. That was why she was saying that it was important to protect the whole thing if there are sections of it that are fish habitat.

Bill Wheeler spoke about the forest regulations addressing CMZs and taking them out of production. The state paid for those lands. That said to him that someone recognized it as a taking. Mr. Wheeler and Jill Silver discussed programs for compensating landowners.

Kathy Dickson explained her experiences on the Hoh River, stating that 300 year old trees are just as likely to go into the river as a 20 year old tree.

Robert Crittenden discussed large woody debris in rivers and side channels. He described ways we could control river migration. He discussed the questionable productivity of the side channels.

Kenn Brooks thought there had been a good discussion of the issues. He thought if the ideas expressed could be captured, the committee could present a good argument and reasoning for not including CMZs in the critical areas ordinance.

The committee agreed to table the issue until the next meeting and try to reach a conclusion then.

Adjournment:

The agenda for the next meeting will be: complete the Agriculture code and the CMZ issue. An agenda item not discussed at all was the Foundational Principles proposal suggested by Kenn Brooks.

The meeting was adjourned at 10:35 p.m.