



## JEFFERSON COUNTY

### PLANNING COMMISSION

621 Sheridan Street

Port Townsend, WA 98368

(360) 379-4450

Minutes of the Critical Areas Committee Meeting

March 8, 2007

WSU Learning Center

Shold Business Park, Spruce Room

Port Hadlock, WA

Planning Commission Member: Jim Hagen, Peter Downey, Henry Werch, Dennis Schultz

Advisory Group Members, Diane Johnson, Bill Wheeler, John Richmond, Amy Hiatt, Jill Silver, Nancy Stellow, Robert Crittenden, George Younts, Dr. Kenn Brooks, Roger Short, Jim Tracy

Staff Present: Brent Butler and Barbara Nightingale

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#### Summary:

Brent Butler announced: 1) the Planning Commission approved the 30-day extension time for the CAO subcommittee; 2) DCD staff: Al Scalf, DRD Manager Stacie Hoskins, Brent Butler and Barbara Nightingale have begun weekly meetings to review CAO subcommittee documents by; 3) Eric Towes will begin work on March 19, 2007; 4) Brent spoke with Rick Mraz, WDOE, about only having the deviations from the Second Settlement be considered for review at this time, that the WDOE review of Kenn Brooks reports is almost completed and will likely be available for next week's meeting; 5) Barbara Nightingale will be leaving employment with DCD to take a position with an outside consultant; and 6) a sample letter to the tribes was distributed to committee members for their review and comments informing tribes of ongoing CAO committee work and upcoming comprehensive plan amendments. The letter informs the tribes of upcoming work and invites the tribes to comment on the associated work products.

The meeting opened at 7:00 PM. The committee discussed tribal involvement and committee work process. The committee history and the role of majority and

minority work were discussed. How to manage differences of opinion and the order of the agenda were discussed. The public comment period was basically a question and answer/discussion period on the tribal role respective to proposed critical area policies.

Diane Johnson moved to hear Amy's report. Bill Wheeler seconded it and the committee voted: 8 in favor; 4 abstentions; and 0 nays to allow the meeting to begin with Amy Hiatt's presentation, which began with last week's meeting.

Amy Hiatt Presentation of Wetland Example and Discussion of Recommendations for Protection of Critical Areas on Lands with Agricultural Activities

Amy finished her presentation and narrative based on the WDOE Wetland Rating System. She also discussed her Proposed Recommendations for Ag Code (2/8/07) based on the Whatcom Code template. In particular, she discussed the administrative portions of Section 5 of that draft code. Amy suggested that in the case of wetland rating in Chimacum, Center and Tarboo valleys, with large areas of wetlands, that the County should perhaps sponsor wetland rating of the lands. Landowners should have a copy of the wetland rating system. Amy further explained that under this system, if a property does not have a wetland within 300 feet of it or near the building site, then the owner would be clear, as 300' is largest buffer by this code (i.e. Category I and high impact use), based on WDOE guidelines. On the other hand, if you are within 50 feet of the prescribed buffer, depending upon the activity you are proposing and the category of the wetland, a delineation could be required. Amy also recommended that once an owner receives a rating, if that owner engages in restoration, then the buffer should be based on the original rating rather than an increased buffer, should the restoration result in a higher functioning wetland. Amy explained that artificial wetlands are generally not regulated but wetlands used as part of compensatory mitigation would be regulated. Instructions to the public should call out when federal and state regulations apply. Amy's proposal lightens up on "no touch" buffers for wetlands.

Amy discussed "Activities Allowed without Notification" (see Amy's 2/8/07 Recommendations for Protection of Critical Areas on Lands with Agricultural Activities). In particular, she discussed those lands platted after January 1, 1960 (See Section A page 9) and vegetation management regulations (See Section F page 10) that allow the landowner to control noxious weeds and undertake habitat enhancement. Amy also referred to page 13 of the above recommendation document which characterizes agricultural activity intensity. Amy discussed the differences between wetland rating and delineation. Amy explained that the narrative associated with her pictures and site plan drawings were based on the WDOE Wetland Rating System of Western Washington 2006. A discussion among group members concerning when, and if full, delineation would be required in all situations followed. Dr. Brooks argued that you cannot

separate delineation from rating as the biologist needs to delineate in order to rate the wetlands.

Roger Short raised the issue of different raters rating a wetland as Category I, when another rater rates it as a Category II wetland. How accurate are these delineations? Dr. Brooks went on to say that Counties do not typically have the resources to hire wetland biologists but that 80-90% of ratings between raters agree with one another. There were also statements of Jefferson County needing an approved list of delineators. Bill Wheeler questioned if County has a list of delineators and what method the County used to settle a delineation dispute. Jim Hagen raised the question as to whether a more prescriptive version serves the interests of the landowner. Dr. Brooks commented that he had never seen a County turn down a delineation report as unacceptable. However, he referred to a Sequim case that had multiple consultants that resulted in 2-year pause before final delineation was completed. Jim commented that more prescriptive measures may be easier to administer but less acceptable to the landowner.

#### Dr. Brooks' Proposed Wetland Code Using Island County Code Template

Dr. Brooks began his presentation on a proposed wetland code based upon the Island County model. The group began reviewing the proposed wetland code beginning with Dr. Brooks' proposed NEW SECTION – 18, A Wetlands.

The committee agreed to remove the phrase and all references to “deep water habitats” anywhere it is found in this code. The group discussed the wording of A.2 and suggested that the wording “as part of the permit process” be added to the second sentence of that section. The group discussed the nexus between forest regulations relative to wetlands and Class IV Conversion under Forest Regulations for a mature forest. Bill Wheeler recommends that the code refer to forest practices in general. Dr. Crittenden objected to the proposed Code, its basic premise and plans to write his own minority report. Bill Wheeler objected to minority reports but Peter Downey, as a Planning Commission member, welcomed minority reports. Nancy Stellow raised the question of where the minority and majority points disagree and the need for clarity on those points. Henry Werch requested that the materials be provided in a manner that delineates where the disagreement is.

Jim Tracy and Amy Hiatt disputed A.4. Sections A.4. b & c referring to “alteration”. Dr. Brooks explained that alteration is a conditional use. The group discussed the intentions of Section A. 4.c (v). Nancy Stellow moved to strike A. 4.c (v). This was agreed upon by the larger committee.

Jim Hagen discussed the need to move to close the discussion for now and follow a public discussion session with a discussion and review of process.

### Public Comments

Laurie Gore – advised the committee that they needed to prepare themselves before coming to review this proposed code and have ideas ready to discuss.

Frank Hall – advised that this is particularly important, given the complexity of the subject.

Denver Shoop – stressed that it is important to consider what portion of the burden goes to the County rather than only to the individual landowner. He would like to see the burden of proof of harm and costs be carried by the County rather than the landowner.

A brief question and answer session between the public and the committee on the background of the May 17, 2006 CAO Ordinance, the WEC Appeal and Settlement Agreement terms, and subsequent committee work took place.

John Richmond commented on the underlying theme and point taken by Al Latham and Dr. Brooks that stewardship is a voluntary effort. He stated that incentives yield compliance and regulations do not create incentive. He reported that WRIA 20 went through similar process with production of hundreds of pages of writing and 5 years of committee work. To begin with, they did not recognize farming nor the tax income received from agriculture and forestry. West Side of Jefferson County is very different climatically from the East side and it is disconcerting to see these regulations apply to Western Jefferson County. Now seeing timber clear-cutting going up hillsides and perhaps resulting in future landslides. Outcome of regulations needs to succumb to common sense. West Side endeavors are getting tired of “East Side First” approach to ordinances and would appreciate practical real world approach.

Mike Bellinsky – confirmed March 2005 county negotiation and release of draft critical areas ordinance May 2006 cited timeline.

### Committee Work:

Jim Hagen initiated a process check for agenda and preparation for next week’s meeting and review of Dr. Brooks’ proposed wetland code. Wheeler commented that process resulted in minority writing a separate report. As this process worked, he recommended returning to this process and completing the process.

Dr. Brooks requested comments on his wetland code. Brent Butler advised that committee member comments on Dr. Brooks’ code should be sent to Jeanie Orr and Jeanie Orr will forward those comments to Dr. Brooks. The committee agreed to continue this process of reviewing the Dr. Brooks’ Wetland Code.

Meeting Adjourned 10:00PM