



## JEFFERSON COUNTY

### DEPARTMENT OF COMMUNITY DEVELOPMENT

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## Memorandum

To: Jefferson County Planning Commission & Critical Areas Committee  
Advisory Group

From: Josh D. Peters, Senior Planner & Rachel McHugh, Assistant Planner;  
Long-Range Planning

CC: Board of County Commissioners; County Administrator; Chief Civil  
Deputy Prosecuting Attorney

Date: 10/26/06

Re: Notes from interview with Assistant Director of Island County Planning  
& Community Development regarding critical areas protection

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### CRITICAL AREAS, AGRICULTURE & WATER QUALITY MONITORING

On Tuesday, October 17, 2006, staff from Jefferson County Long-Range Planning visited with Jeff Tate, Assistant Director of Island County Planning & Community Development (PCD). Mr. Tate has been involved in coordinating Island County's critical areas protection program, including the County's response to a series of challenges under the Growth Management Act (GMA) to how the County addresses existing and ongoing agriculture. The following notes summarize the key findings from the interview.

#### ***Growth Management Compliance Background (Simplified)***

- Island County's critical areas regulations for existing and ongoing agriculture were appealed in 1998 by the Whidbey Environmental Action Network (WEAN).
- One of the main issues was how agriculture would be regulated to protect critical areas in different land use designations (i.e., zoning). WEAN wanted to restrict any kind of alternative regulatory approach to standard buffers to those lands designated Agricultural Lands of Long-Term Commercial Significance

under GMA. The County responded that a program of conservation practices that protect critical areas is effective irrespective of zoning.

- The case went from the Western Washington Growth Management Hearings Board (Growth Board) through Superior Court to the Court of Appeals. The State Supreme Court elected not to hear an appeal of the Court of Appeals decision.
- The Court of Appeals said that critical areas regulation for agriculture should be zone-specific. The County's program under challenge was not zone-specific and referred to a general set of conservation practices as an alternative to standard critical areas buffers.
- The Court of Appeals decision prompted a multiyear planning process to address the regulation of existing and ongoing agriculture with respect to critical areas.
- An Agricultural Review Committee formed in late summer 2005 to work on this issue. After four meetings, the Committee completed a final draft report and recommendations, dated October 7, 2005.
- State agencies have been actively involved throughout the process. The "best available science" (BAS) considered and commissioned by Island County was peer reviewed by State agencies and others.

### ***2006 Ordinance for Existing & Ongoing Agriculture***

- Island County adopted an ordinance in May 2006 to address how existing and ongoing agriculture is regulated to protect critical areas. The ordinance is scheduled to take effect in November 2006.
- Provisions for existing agriculture are considered site-specific, alternative regulation, as opposed to an exemption from critical areas regulations.
- The only activity allowed in critical areas buffers for existing and ongoing agriculture using the standard conservation practices plan is haying. There is no soil disturbance, no cultivation, no fertilizer application, and no livestock grazing. Livestock must be fenced out of the buffer. There are also seasonal restrictions on wet meadows.
- Neither the farming community nor the environmental community was particularly supportive of the May ordinance.
- The Growth Board has since issued two decisions on the May ordinance in response to a WEAN petition for review. The County was found to be in compliance.

- The May ordinance and the subsequent Growth Board decisions address existing and ongoing agriculture only, not new agriculture. Existing and ongoing agriculture is defined as activities prior to **December 1, 1998** with respect to all critical areas *except wetlands*.
- For **wetlands**, the date is **December 31, 1984**, as Island County's wetland regulations went into effect January 1, 1985.
- Island County developed its own set of conservation practices that are considered standard for lower intensity agricultural activities.
- Practices from the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTAG) are customized in individualized "farm plans" or "conservation plans" for higher intensity agricultural activities.
- Agricultural intensity is defined in Island County's development regulations. Similar definitions from Whatcom County and King County were consulted.
- The Growth Board ruled that Island County's list of standard conservation practices and the NRCS conservation practices in the FOTAG were developed using BAS.
- With respect to farm plans, the "record of decision" filed at the County includes the BMPs. The full plan is protected from public records disclosure, pursuant to a recent statutory amendment.
- The County does not intend to monitor each farm to make sure the standard or customized BMPs are in place. The Conservation Districts will work with landowners. Critical areas are to be protected by the County based on a water quality monitoring and adaptive management program, as described below.

### ***Water Quality Monitoring and Adaptive Management Program***

- A water quality monitoring ordinance was adopted in association with the critical areas amendments of May 2006. Without this companion ordinance and program, it is likely that the Growth Board would not have determined compliance for Island County's critical areas regulation for existing and ongoing agriculture.
- With respect to field implementation and enforcement, the County did "windshield" and aerial surveys. Geographic Information Systems (GIS) information shows all un-forested pasture lands. The second check is PCD providing the Conservation District with an updated and prioritized farm list. This prioritization is based on water quality monitoring in the context of basin-by-basin planning.

- Island County PCD prioritizes implementation of the adaptive management component of the water quality monitoring ordinance. The Conservation Districts provide technical assistance to landowners based on the prioritization, but do not assume a regulatory role in conjunction with Island County PCD.
- The water quality monitoring program is a five-year, approximately \$1.2 million investment that currently has an agricultural emphasis, which will evolve as the County adopts and implements revisions to its critical areas under the GMA update requirement. The ongoing cost is about \$350,000 per year, including monies transferred to WSU Extension and the two Conservation Districts that work with the County. PCD does the monitoring with three new staff positions. Money for the program is raised through development permit revenue.
- Basin prioritization is based on risk. There are approximately 160 sub-basins. This year 45 are prioritized. There are 24 basins that have been used for baseline data for various land use categories (e.g., agriculture, developed, mixed). There are 24 other basins that the County goes to because of their importance as resources.
- The monitoring program establishes a process for response to data. When a problem is found, the response sequence is as follows: source identification, additional monitoring upstream, compliance assessment, outreach, enforcement; and adaptive management. The program gives authority to monitor at the site-specific level and regulate accordingly.
- Enforcement decisions are administrative, made in consultation with the Conservation District and others, with a related appeal process. The Conservation District assists if a problem is found. In those situations a modified farm plan is more likely the first response, as opposed to immediately instituting standard buffers.

### ***Revised Critical Areas Ordinance Expected***

- Island County is in the 2005 group of local governments needing to review and, if necessary, revise comprehensive plans and development regulations under the required "GMA update." Amendments to the GMA delayed the critical areas BAS review for the 2005 jurisdictions for one year, making Island County's deadline December 1, 2006.
- The County plans to release a critical areas proposal in November 2006, with adoption by ordinance scheduled for February or March 2007.
- New agriculture may or may not be regulated differently from other land uses with respect to the application of standard critical areas buffers. One consideration would be to manage areas that are already in a state of pasture differently than forested or vegetated areas that have not been cleared.

- For wetlands protection, Island County has used a simple A, B, or C categorization instead of the 1993 State Department of Ecology (Ecology) wetland rating system. C is human-made and not regulated. The difference between A and B is vegetation, whether native or non-native, respectively. The standard buffer for A is 100 feet.
- Habitat review is provided by PCD for permit applications. The landowner is responsible for wetland delineation.
- Dr. Paul Adamus of Oregon State University was contracted to produce a wetland survey and health report for Island County. The Phase 1 report cost \$80,000 and its production relied upon a team of County summer interns for most of the field work. Under the guidance of Dr. Adamus, the interns evaluated the conditions of two wetlands a day for four hours each. The wetland sample was randomly selected, but with a geographic element to the selection was included to assure the representation of a variety of conditions throughout the county. The study included integration of GIS analysis and aerial photographs from 1984 and 1998. Phase 2 is Dr Adamus's review of BAS. Phase 3 will include his recommendations concerning the County's critical areas protections.
- Currently Island County is debating between adopting a modified version of one of the wetland management alternatives in the 2005 Ecology guidance or going with a customized system. Potential components of a customized system are ways to more directly address wetland sensitivity, manage wetlands according to habitat values on a species-by-species basis, and integrating elements of a landscape approach.

Island County planning documents, ordinances and code provisions can be accessed at: <http://www.islandcounty.net/planning>.

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