



JEFFERSON COUNTY
PLANNING COMMISSION

621 Sheridan Street
Port Townsend, WA 98368
(360) 379-4450

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR MAY 9, 2007

- A. OPENING BUSINESS
- B. PRESENTATION OF REPORTS FROM CRITICAL AREAS COMMITTEE/ADVISORY GROUP
(Continued)
- C. PUBLIC COMMENTS
- D. ADJOURNMENT

A. OPENING BUSINESS

The regular Planning Commission meeting was called to order at the WSU Learning Center at 6:30 p.m. by Chair Peter Downey. Planning Commission members present were JD Gallant, Henry Werch, Peter Downey, Bill Miller, Ashley Bullitt, Edel Sokol, Patricia Farmer, and Mike Whittaker. Bud Schindler was excused.

DCD staff present were: Al Scalf, Brent Butler, Joel Peterson, Karen Barrows, and Cheryl Halvorson, secretary.

There were about fifty members of the public present. Those who signed the guest list were: Edna Forker, George Forker, Bob Huelsdonk, Chuck MacLearnsberry, George R. Hansberry, Owen Fairbank, Hans Daubenberger, Steve Todd, Paul Heinzinger, Moe Rogers, Mike and Joy McFadden, Phil Flynn, Earl Kong, Phillis Schultz, Denver Shoop, Chuck Boggs, Julie Boggs, Judi Stewart, Larry Bonar, Jim Storey, Adele Govert, Roger Short, Steve Short, Lyle Almond, Fred Weinman, Richard Hild, Dennis Schultz, Frank Hoffman, Norm MacLeod, Teren MacLeod, Jo Yount, John Richmond, Jim Hagen, Sandy Hershelman, Robert Crittenden, Renee Bush, William Wheeler, Dick Bergeron, Laura Rosenberg, Linda Smith, Kristen Harma, Todd Wesman, Jim Tracy, Sally Lovell, Clark Crandall, and Virginia Crandall.

Staff updates: Al Scalf reported that the week of May 14 would be a very busy week. Staff would present the Planning Commission and staff recommendations on the 2007 Preliminary Docket for the Comp Plan amendment cycle to the BOCC. He reviewed the Planning Commission recommendations on the suggested amendments, noting that the staff recommendation differed, suggesting that only one of the suggested amendments move forward to the Final Docket.

Al Scalf reported that DOE representatives would be in the community on May 15 and 16 regarding the in-stream flow rule issue. Then on May 17 the County Commissioners and City Council will hold a joint session to discuss regional services, housing affordability, economic development, and a draft climate change resolution.

Brent Butler announced that the Housing Action Plan Network [HAPN] will hold its next meeting on May 15.

Committee reports: None.

B. PRESENTATION OF REPORTS FROM CRITICAL AREAS COMMITTEE/ADVISORY GROUP (Continued)

Peter Downey reminded the presenters that the presentations were supposed to be reports and not debates or rebuttal of other reports. The suggestion had been made that the minority reports be presented first this time with the majority reports following, reversing the order from the last meeting. The commissioners agreed with the change in order. He asked each presenter to provide a summary of their background and experience.

The commission began with the reports on the **Channel Migration Zones [CMZs]** topic.

Jill Silver provided information on her background and experience in environmental sciences.

Jill Silver summarized their report on CMZs using PowerPoint slides. She explained that Jefferson County was unique in the nation, except Alaska, in that most of its CMZs on its big rivers were still largely functional and still support relatively healthy populations of fish. That was due to low development pressure, so far. She pointed out that CMZs include all five rule

defined critical areas under the GMA, although they are not defined themselves as a critical area. They are most important to fish as Fish and Wildlife Habitat Conservation Areas. She displayed a slide of a side channel of the Hoh River and explained its importance to fish habitat. She showed a slide of a large cedar stump and explained the purpose of very large trees in a CMZ. She provided information on the definition and delineation of CMZs. She pointed out the differences between the Forest Practices method and the DOE method of delineation. She discussed CMZs from a human health and safety standpoint. She displayed some slides from the Hoh and Elwah Rivers depicting the erosion that CMZs can cause.

Jill Silver said that the point was that you had to look at where the channel has been and where it might go. They were recommending that CMZs be incorporated into the Fish and Wildlife Habitat Conservation Area [FWHCA] and Geologically Hazardous Areas sections of the critical areas ordinance [CAO], allow existing uses to continue, allow compatible uses such as grazing and recreation in the high hazard zones, but to not continue additional permanent development in the high hazard zones, and to pursue all appropriate and possible means to assist landowners with options for protection of CMZs.

Bill Wheeler provided information on his background and education.

Using PowerPoint slides, Bill Wheeler provided a summary of the committee majority's recommendation. He explained that Ms. Silver had provided an extensive presentation to the sub-group and to the full committee. However, the committee had chosen to recommend that CMZs not be specifically called out in the CAO. Copies of his PowerPoint slides were handed out to the Planning Commissioners.

Bill Wheeler provided information on the committee's reasoning for not considering CMZs as a specific critical area in the CAO. If they needed to be protected at all, it should be done through some other means, such as the Shoreline Master Program [SMP].

Bill Wheeler said that different definitions of CMZs had been developed, but the one suggested by Ms. Silver was representative. It was important to recognize that regulation of a CMZ in a large river was not a small matter. He provided an example on the Big Quilcene River. Using the CMZ to create a FWHCA would substantially reduce the usefulness and value of 73 parcels with an assessed tax value of about \$8.5 million contributing about \$70,000 per year in property taxes. Another slide depicted a small stream that still met the criteria for a CMZ. That sort of CMZ existed in hundreds of places in this county. While classifying this sort of CMZ as a FWHCA critical area will vastly increase the amount of protected habitat, identifying all such areas will be difficult and costly. Since many of the streams associated with this type of CMZ are not fish bearing, it was difficult to see what benefit would actually be gained over and above what was already required for a riparian buffer.

Bill Wheeler explained that, after hearing Ms. Silver's presentation to the sub-group, they focused on two major questions. The first was whether adding CMZs to the CAO was appropriate. Second, if it was, the question was where to include them (geological hazard areas, FWHCA, or frequently flooded areas). They reviewed the GMA and found that it does not mention CMZs. When you look at each of the five critical areas under the GMA, none of them seemed to apply very well to all of the characteristics, functions and values of CMZs. While some of them seemed to apply to some aspects of CMZs, it did not cover other aspects of the CMZ. Either CMZs were a new type of critical area that the GMA had not anticipated or the legislature was saying in effect that the critical areas already defined in the GMA were sufficient for the protection of CMZ related functions and values.

Bill Wheeler said that, since the GMA did not provide guidance directly pertinent to CMZs, the committee looked at other regulations that might be more appropriate. The Shoreline Management Act was one place that does refer to CMZs, but in a limited way because it only applies to rivers and streams that exceed flows of 20 cubic feet per second [cfs]. The Flood Control Act, while not directly referring to CMZs, does provide an effective way to deal with health and safety and even environmental issues associated with CMZs and had some added advantages in terms of its authority. The Forest Practices Act does regulate CMZs directly, including extending the riparian buffer from the edge of the CMZ. The committee noted that large portions of the county already fall under those regulations. They also looked at the Hydraulic Code and the State Environmental Policy Act [SEPA]. While both are applicable under some very limited circumstances, neither indicated that the protection was based on the existence of the CMZ.

Bill Wheeler said that CMZ regulations had the distinct functional potential for restricting the use of more land than any other critical area designation. If the county elects to include CMZs in the CAO, it has no inherent authority to compensate landowners for the resulting loss of use or value and its action would certainly be challenged by at least some of those landowners. Complicating the issue of a potential takings claim is the fact that the legislature, when they included CMZs in the FPA, also established a program and the funding to compensate landowners for the loss of timber and land value. In addition, if the reason for protection of CMZs was to protect life and property and even environmentally sensitive areas, the Flood Control Act provided authority for counties to exercise the right of eminent domain to pay landowners fair market value for the land taken for the public good.

Bill Wheeler reviewed what fifteen other Western Washington counties had done with regard to CMZs. Only six counties had included CMZs in their CAOs and most of them represented large metropolitan areas. He said that the CMZ portions of those ordinances contained detail well beyond what our CAO was likely to contain. Among rural counties, only Mason County had put CMZs in their CAO.

Bill Wheeler discussed how to delineate CMZs, stating that the methods used were very detailed and complex. He referred to the 2004 delineations of the South County rivers under DOE draft guidelines, stating that no attempt has been made to substantiate the accuracy of the results. The DOE approach is designed to identify CMZs along long stretches of a river, not to specific locations that are necessary to condition a permit. They had recently learned that DOE was working on a new, different approach to delineating CMZs, which will replace the draft guidelines. The Forest Practices manual provides a different, though somewhat similar, approach to delineation. It is intended to provide site specific delineation relative to a harvest area. That method has the added advantage of being subjected to rigorous and ongoing scientific review.

Bill Wheeler discussed the GMA requirement to use best available science [BAS] and described the committee's findings in that regard. It included geomorphology, which had the most scientific literature, wildlife habitat in CMZs, which had limited literature, and risk assessment, which had no indication that any formal, let alone rigorous, risk assessment had been done.

In summary, Bill Wheeler said that, if the county chooses to designate CMZs in the CAO, even though it is not required under the GMA, it will be obliged to protect those areas. Including them under the FWHCA means that anywhere a stream, regardless of size, goes through relatively level terrain, it must be assumed to be associated with a CMZ. This set a legal trap that the county ought to back away from. CMZs do not need to be regulated under the CAO. If the county decides CMZs need to be protected, the appropriate place to do so would be in the Shoreline Master Program or at least the designation should be limited to a more manageable size.

Ashley Bullitt asked how there were streams without fish. Jill Silver responded that there are not generally streams without fish in the flat areas that are connected to riparian habitat. Bill Wheeler answered that there are quite a number of streams where the upper portion will not have fish for one reason or another and certainly will not have threatened or endangered fish. Al Scalf explained the current stream typing system (Type 1 through Type 5), with Type 4 and 5 streams not typically having fish.

Henry Werch said that Mr. Wheeler had touched on the number of Western Washington counties that included CMZs in their CAOs. He asked which of those CAOs had recently been reviewed and/or found acceptable to the Hearings Board, with or without the inclusion of CMZs. Bill Wheeler responded that about six counties had included CMZs within their ordinances, almost all within their geological hazardous areas sections and almost all of them being the more populated counties. He said that he had looked at all of the case summaries for all three Hearings Boards and could find nothing about CMZs. Jill Silver referred to a chart in their report showing her review of several counties' ordinances. Thirteen included CMZs with them being included under the geo hazard, FWHCA or floodplain sections. The counties that have recently done their updates included CMZs, while the counties that do not currently have CMZs in their ordinances have their updates due in 2007, or they do not have migrating rivers in them. So it appeared to her that those counties that have done recent updates and have migrating rivers have followed the CTED and WAC guidance to incorporate CMZs into their ordinances.

Edel Sokol asked Ms. Silver how you explained a salmon run in a river that had absolutely no trees. Jill Silver replied that hatcheries were one explanation. In places like Eastern Washington, she explained that different fish stocks were habituated to different conditions. Those stocks of fish that are in our region have evolved with the conditions that exist here, which includes a lot of wood. Ms. Sokol stated that all rivers are not the same. Ms. Silver agreed that was true. Also, all regions are not the same and all fish stocks are not the same, pointing out that Elwah fish are different from Hoh fish, etc. Within their ability, they are able to adapt fairly quickly.

Mike Whittaker asked about the timeframes over which the meander takes place, saying that he had found information on 100 year and 500 year floodplains. He asked if there was a standard by which to determine the timeframe. Jill Silver replied that it depended on the goals of the community or the entity adjacent to the CMZ; it depended on how long you wanted to plan for. Most jurisdictions chose to go with the 100 year timeframe, although some have gone with the 200 year timeframe. Mr. Whittaker said it would be up to the county to determine that. Ms. Silver agreed that was essentially correct. By both the DOE and the Forest Practices Board, it tended to be the time it takes to grow a tree that will function within the zone.

Edel Sokol asked Ms. Silver to talk about costs for delineating, stating that the WEC agreement actually called for such costs. Jill Silver replied that she was not familiar with that in the agreement.

The commission moved on to the reports for **Fish and Wildlife Habitat Conservation Areas [FWHCA]**.

Jill Silver provided a summary of the minority's report using PowerPoint slides. FWHCA areas include streams, rivers, and for their recommendation, CMZs. Also, their recommendation includes marine shorelines, as do a number of other counties' CAOs.

Jill Silver said that their recommendations are based on existing and locally derived BAS. There is an extensive record of BAS available through various counties, DOE, DFW, CTED, and Jefferson County.

Jill Silver stated that their recommendations are a compromise within the range of buffer distances recommended in the scientific literature. They are consistent with legal precedence and with other jurisdictions and with HB rulings on stream buffers in other counties, based on similar BAS. They all take into account the work that has been done identifying the functional contribution or the eco-system services contributed by streamside buffers to aquatic habitat or to fish and wildlife. She said that sometimes folks say that other counties' science does not apply here. However, landscape processes function the same, so if you are looking at science from British Columbia or from Oregon or from other Western Washington counties, it was comparable and applicable to Jefferson County.

Jill Silver stated that they chose the Whatcom County CAO because of its structure. But in reading through it, they found that there were similarities in terms of landscape and social issues.

Jill Silver provided information on their recommendation for buffers for streams and rivers, stating that it was very important to measure buffers from the edge of the ordinary high water mark rather than from the bank full channel width. The reason for that was because of flooding rivers. Their suggested buffers ranged from 200 feet to 75 feet but that certain uses be allowed within the moderate and low hazard areas.

Jill Silver explained the benefits of riparian buffers and referred to the Tomassi Report on wildlife. She showed a slide on elk, suggesting that they ought to be a species of local significance.

Jill Silver briefly discussed marine shorelines. They recommended that the county designate marine shorelines as FWHCAs with buffers of 150 feet from the ordinary high water mark or the top of the bank. She pointed out that the SMP was under development right now. She said that the GMA said that marine shorelines should be regulated in the interim in the CAO. They recommended flexibility in applying the buffers.

Dennis Schultz provided information on his professional and educational background. In retirement he has a small farm.

Dennis Schultz summarized the information they reviewed before deciding on their recommendations. They found the data bases to be nonexistent or very inadequate. He addressed the Tomassi Report on wildlife. They thought it was a good report for developing enhancement or rehabilitation projects in the future but it was not good for regulatory purposes. The threatened and endangered species in our county are already covered by federal and state regulations. We should only have to refer to those regulations in our code. There is no evidence that wildlife have diminished in this county; there are actually indications that some have increased, citing the numbers in Port Townsend. Ninety-five percent (95%) of the county is already covered by federal, state or commercial forest lands regulations; we are only talking about 5% of the land base.

Dennis Schultz pointed out that the SMP will have its own critical areas sections. That ordinance must include all elements of the CAO. This committee did not have a charter to write a SMP.

Dennis Schultz said that agricultural lands (part of that 5%) are already covered with their own buffers for wildlife. They are actually exempt under SSB 5248 for the next three years, but our ordinance has already done a good job of addressing ag lands.

Dennis Schultz said that the proposed wetland rating system had three different ways to rate a wetland, one of which is a rating for the habitat values. They proposed that no matter which rating produces the biggest

buffer, that buffer be the wildlife buffer, so that there be only one buffer for a wetland. There is no habitat rating system for streams similar to the one for wetlands. He said that the habitat requirements for wildlife vary from a few meters to hundreds of meters depending upon how the study was conducted. There are a lot of studies on habitat with most talking about the maximum buffers needed. However, there are very few studies addressing the minimum buffers needed.

Dennis Schultz referred to Ms. Silver's comments about a network of riparian zones throughout the county for streams. He said that you should keep in mind that most of the streams she referred to are all outside our critical areas. They are the high land streams. The only streams we have within our critical areas are really low land streams which are not as critical or important as the high land streams.

Dennis Schultz said that the committee's recommendation for streams was to use the forest regulation buffers. They have been approved by DOE, DFW, Department of Agriculture, and the federal agencies.

Dennis Schultz said that their big recommendation was on the Species and Habitats of Local Importance. He described their proposal for designating such areas. He showed a slide depicting a comparison of stream buffers between the majority and minority proposals.

Ashley Bullitt referred to the comment that a lot of our land was covered by the federal government. She asked if Mr. Schultz had confidence that the federal government would, in fact, enforce those regulations and protect our county interests. Dennis Schultz responded that federal and state laws and regulations take precedence over county ordinances. He thought it was up to the people to speak up and demand the federal government enforce its own rules.

Edel Sokol referred to the Quimper Wildlife Corridor and Ms. Silver's comment about it being a critical area and asked if that was contrary to the Land Trust philosophy of voluntary action. Jill Silver responded that she was just suggesting that the Quimper Wildlife Corridor was a good example of a wildlife corridor. She said that there was a lot of work that had been done already and they had already purchased a lot of land for it. They were not trying to regulate it; they were trying to include it in the overall corridor plan.

Peter Downey said that the committee created its buffers based on forest practices. The committee had acknowledged that those buffers for forests might be pertinent, but if you had more intensive development with more impervious surfaces, the Forest Practices buffers may not be adequate. He said that the Forest Practices Act [FPA] was developed with the assumption that the land would remain in forestry. The issue was what happened with land that would be more intensely developed. Dennis Schultz responded that in practical terms, even with the 25% allowance for impervious surfaces in our rural areas, he doubted that someone could afford to cover 25% of five acres with impervious surfaces. He did not think it would be significant.

Mike Whittaker asked what would or would not be allowed in those buffers. Dennis Schultz responded that their proposal was very similar to the minority's in terms of uses within the buffers. In terms of the Habitats of Local Importance, you could create whatever you wanted because they were special zones. He described a possible scenario for the Quimper Wildlife Corridor.

Mike Whittaker asked, if impervious surfaces are important, where shoving people into a UGA figured into that scheme. Peter Downey replied that, with a UGA, you had opportunities to address stormwater issues that you would not usually have in the rural areas.

The commission moved on to the presentations on **Agriculture**.

Jill Silver provided a summary of their recommendation. It suggested an alternative regulation approach for agricultural activities in wetland and riparian areas. Their suggested approach was based on that developed by Whatcom County in its 2005 update and further refined by Island County in 2006. It would include agriculture in the Rural Residential zones and would require BMPs. Because of SSB 5248, it effectively delayed the local discussion of regulating agricultural activities in critical areas until there is some guidance issued at the state level. An unfortunate consequence of the bill's prohibition against amendment is that our current CAO does not exempt from critical areas regulations all of the land in our county that is currently being used for agriculture. It exempts only "existing and ongoing agriculture" on land that is zoned as Agricultural Resource Land or that is enrolled in the Open Space Tax Program for agriculture. Therefore, the approximately 1700 acres of farmed land in the Rural Residential zones will have to remain in a kind of limbo until these issues are resolved. In the meantime, they supported efforts by county government, the Conservation District, and all other agencies to organize and promote voluntary activities by the farmers to protect and improve water quality and fish and wildlife habitat.

Al Latham provided information on his background and work with the Conservation District. He provided an overview of the committee's agriculture proposal, using PowerPoint slides. He said that the prime ag soils are in the Chimaquum Valley and Beaver Valley, stating that they are all converted wetlands. He provided information on the voluntary protections the Conservation District has promoted over the years. He described the habitat and water quality improvements that have been done. He stated that much of this work would not have been done through regulatory programs, but people were more willing to do things on a voluntary basis.

Al Latham summarized the committee's recommendations for the Agriculture and Critical Areas Ordinances. One recommendation would remove the April 28, 2003, date because there was a lot of land that has not specifically been used for agriculture in the last five years due to absentee landowners, age of the landowners, etc. That land should not be removed from the agricultural land pool. Their recommended Agriculture Ordinance incorporated critical areas. It blended elements of the existing Ag Ordinance, the Island County CAO, the Chimaquum Agriculture Fish and Wildlife Protection Plan, and other existing regulations. It combined all regulations pertaining to agriculture into one document instead of having to search through various sections of other ordinances. The existing and proposed Ag Ordinance states that agriculture is not subject to stream and wetland buffers. In exchange for this, the ag community is expected and has demonstrated that they will voluntarily establish and implement appropriate BMPs to protect from additional impacts to critical areas. He said that their proposal allowed flexibility in the ag practices. It said that the farmer is responsible for impacts to critical areas caused by themselves and not responsible for conditions related to offsite, non-farming activities. There is an emphasis on water quality monitoring, stating that there is regulatory backup for situations where someone is causing problems. He said that part of their recommendation included a standard farm management plan. Also, the Conservation District could help people with a custom farm plan.

Norm MacLeod provided information on his background and experience. He addressed SSB 5248, which had been signed by the Governor. It was now in effect. One of the points of the bill was that it did not limit a jurisdiction from adopting or employing voluntary programs to protect or enhance critical areas associated with agriculture. In fact, it encouraged counties to do so and to include monitoring programs to assure their effectiveness. The bill does not limit agricultural activities to "existing

and ongoing agriculture". It includes agricultural uses and practices currently existing or legally allowed on rural land or agricultural land. The limitation to agricultural land does not exist for the next three years. During that time, stakeholder groups will be negotiating and conducting an examination of the conflicts between agricultural activities and CAOs. Stakeholders are to consider opportunities and innovative solutions including, but not limited to, outcome based approaches that incorporate to the maximum extent practical voluntary programs and approaches. Regulatory constraints on agricultural activities are used as a last resort when desired outcomes are not achieved through voluntary programs or approaches. The reason they took out "existing and ongoing agriculture" and the limitation of agricultural practices to those lands already in agriculture was to allow the development of "new agriculture"; they wanted to encourage that. This is an opportunity for anyone who wanted to be involved in sustainable agriculture to get started and demonstrate by the end of this three years that what they have been doing has not degraded the eco-system or has actually improved conditions.

Edel Sokol asked, if these buffers became part of the CAO, whether the farmers would still be able to apply for the CREP program, since they were mandatory buffers anyway. Al Latham responded that they could. In some cases where those have been adopted, they have ruled that, unless a farmer got a notification from the county saying they have to comply, they could still be eligible for the CREP. Once they got a notification from the county that they had to put in a certain buffer, they would no longer be eligible for the CREP program. They may be eligible for other programs, however.

The commission moved on to the **Wetlands** topic.

Jill Silver provided a summary of their recommendations for wetlands, stating that it was a proposal they submitted to the committee in February. She provided information on some policy recommendations concerning wetlands. They included improving our wetland inventory and mapping, land use impact levels, waiver distances and process of identification, rating and delineation, rating of large wetland units, exemption of certain small wetlands, certification of wetland specialists, and vegetation management. Their land use impact levels would typically result in smaller wetland buffers. She described the waiver distance buffer proposal, stating that it was a provision by which a landowner may avoid the expense of a wetland delineation if the development they proposed was not located near the wetland. Their proposed wetland buffers ranged from 25 feet to 300 feet, with 300 feet being for the highest quality Category I wetland. They proposed a public process in which large, connected wetlands were rated as one.

Dr. Kenn Brooks provided information on his educational background and experience, citing several awards he had won and his two PhDs. His point was that he was a hard core scientist. That was what he would focus on in his presentation. He described the peer reviewed literature he had participated in. He used PowerPoint slides throughout his presentation.

Kenn Brooks said that DOE's BAS was highly questionable and was very controversial around the state at this time. The Western Hearings Board has given the county a great deal of latitude in developing our CAO. The one requirement is that we develop a CAO that protects the existing functions and values of wetlands. He said that the only conservation that counts is the conservation put on the ground.

Kenn Brooks showed slides depicting the four classes of wetlands. He said that Class II wetlands also had high values, like Class I wetlands, but they were not necessarily unique or irreplaceable, which was a key difference between the two. Class III wetlands had some, but generally limited, habitat value. In many cases, they don't need large buffers and, in fact, they can be used for a multitude of purposes; it does not have to be dedicated to a no-

touch environment. He said that Class III wetlands were very common in Western Washington. He said that Class IV wetlands were probably the most common on the Olympic Peninsula. They are generally isolated and have low habitat values. He questioned why you would need a 40-foot no touch buffer on such a wetland for a residential home. Many people do not even recognize it as a wetland. He emphasized that wetlands really vary in their functions and values.

Kenn Brooks provided a brief history of the Supplemental BAS. He referred to the 2004 Tomassi Report, stating that it was an abominable piece of work. He said it was not about wildlife; it was about controlling growth. He described what is and is not BAS. He cited examples of DOE's BAS and the scientific papers they cited and his review of those subject papers and what they really said. In his opinion, DOE's guidance only used pieces of certain scientific papers, taken out of the overall context, to draw conclusions to support their pre-conceived point of view. He then cited other scientific peer reviewed papers that supported much smaller buffers. He described things the legislature needs to do. In light of their findings and other challenges to DOE's BAS, he believed there is a need for an independent review by scientists before either of DOE's main studies is accepted as BAS.

Kenn Brooks provided a critique of DOE's BAS and on the committee's history with DOE in getting information and requests for consultation. He provided two charts showing hyperbolic curves. One was for percent removal of total suspended solids. It showed that after about 30 feet of buffer, you really don't gain much, with the most benefit in the first 10 or 15 feet. The second chart showed the response of species to buffer widths. He described what a "one dimensional analysis" is, which typically came from regulatory agencies because their only business is protection of resources. The bottom line is that DOE's BAS and Guidance is highly precautionary and one dimensional. He stated that DOE emphasizes the need for regulation in Jefferson County based on environmental conditions in urban areas, and they ignore the social, economic and environmental conditions in our county. They pursue large prescriptive buffers based upon avoiding habitat fragmentation. They refer to decisions of the Central Hearings Board rather than the Western Board, noting that the Central Board does not hear our cases and the Western Board deals with the rural counties, which are different from the urban counties. He summarized that 73% of the land in this county is owned by the government and all of it could be devoted to wildlife. Ninety-two percent (92%) of our land is forestland managed by the FPA. Those were major factors in determining restrictions on peoples' use and enjoyment of the small amount of land available to house our residents. He urged the commissioners to read the letters from the other agencies that were critical of the DOE Guidance.

Kenn Brooks described the voluntary stewardship approach they advocated. He provided some slides of voluntary projects in the county.

Kenn Brooks provided a summary of the committee recommendations for wetlands. He described what the Western Hearing Board has said in its decisions for rural counties. He described the underlying principles they adopted in developing their wetlands recommendations. He provided some slides as examples of various wetlands and the committee's suggested buffers versus the DOE's buffers. He described how the committee's recommendations would protect wetlands. He described the provisions for a mitigation plan. He described the regulatory backup which included legally defensible performance standards. He described how their recommendation shared the onus between the landowner and DCD. He addressed how the committee's recommendation minimized the costs. He provided a slide showing the wetland exemptions for the committee's recommendation versus three other counties' exemptions. Ours was very consistent with other counties and more conservative than Island County's. He summarized that this was Jefferson County's CAO; it was not DOE's CAO or WEC's CAO.

Mike Whittaker asked for Dr. Brooks' opinion about the new wetland rating system. Kenn Brooks responded that the new DOE wetland rating system was much better than the old one. He wished there was one for streams.

Pat Farmer referred to the successes of the Chimacum Creek salmon stocks. She asked what caused them to become endangered in the first place and whether regulations would have helped prevent it. Kenn Brooks responded that there were two things, in his opinion, that were primarily responsible. One is conditions in the North Central Pacific and the other is poor harvest management. Those two things have had a significant adverse effect.

In regard to BAS, Henry Werch asked if it was the committee's belief that there exists a body of BAS that can direct what the appropriate buffers for critical areas in this county should be, with a reasonable error factor of plus or minus 10% to 30% or some other percentage. Second, in regard to wetland buffers, he asked if the wetland buffers the committee proposed are prescribed specifically by the BAS Dr. Brooks reviewed, or if they are the result of Dr. Brooks' interpretation of that BAS and a supplemental process that led to his specific recommendation, and what part of the BAS he relied on is specific to Jefferson County. Kenn Brooks responded that there is good BAS describing water quality and hydrologic functions. A very conservative view could result in a much larger buffer. However, the committee took the other approach that a minimum buffer should be appropriate if you do not demonstrate harm. The minimum buffers are well substantiated by the BAS we have available. With respect to wildlife buffers, he did not know that there is a body of BAS that would allow us to develop well-defined minimum wildlife habitat. He knew that the two sets of science he looked at for fragmentation of habitats for birds and amphibians did not have a good body of BAS. Whether or not it exists somewhere else, he did not know. What he did know was that scientists did this all the time and if we were to take a rigorous, multi-disciplinary approach to doing it, we could probably come up with a reasonable answer. Jill Silver said that it was their belief that there is a body of BAS developed by the agency that focuses on wetlands in concert with the agency that focuses on wildlife. The reason she did not have a problem with that is because she trusts that the people who focus on wetlands and wildlife within DOE and DFW have the necessary range of expertise to review the body of science. They have taken from the middle of the range of recommended buffers. Where we don't know much about whether buffers will work, because we are operating under the GMA and are anticipating a population increase and its concurrent effects on wildlife, water quality, and hydrology, a precautionary principle is advised.

Edel Sokol said that Ms. Silver was quoting the DOE BAS. She asked if Ms. Silver had any peer reviewed BAS. Jill Silver provided information on the published literature she had been involved in. Ms. Sokol asked about the big population explosion Ms. Silver was talking about. Ms. Silver replied that she was just following predictions that were being brought out. Ms. Sokol did not share Ms. Silver's opinion that this county would see a big population increase.

C. PUBLIC COMMENTS

Richard Hild congratulated the CAO Committee for its work over so many months. He read his comments into the record and provided a written copy for the record.

Bob Huelsdonk, West End, congratulated the committee on what it has done. He fully endorsed Dr. Brooks' proposal.

Chuck MacLearnsberry said that he had submitted a letter and expected that it had been provided to the Planning Commission.

Denver Shoop said that he had attended almost all of the Critical Areas Committee meetings. He thought the Planning Commission majority had shifted and the new people were environmentalists. He did not believe environmentalists should be on the commission. He supported Dr. Brooks and his recommendations. Even though he did not like most of them, he was willing to go along with them. He said he would support that recommendation but no other. He was tired of what was happening in the county.

Julie Boggs, Chimacum Valley, read her comments into the record and provided a copy for the record. They raised purebred Angus cattle and she was a supervisor for the Conservation District. She described her family's history on their property and in this county. She described their activities through the NRCS in stewarding their land to improve the water quality of Chimacum Creek. She said that the improvements to the creek had occurred because of the voluntary efforts of the farmers in the valley. She supported Dr. Brooks' proposal.

Judi Stewart supported the majority report. She thought it represented a reasonable balance in protecting both property rights and the environment. She thought people were responsible stewards of the land. She was impressed by Dr. Brooks' information. She thought DOE has to get on track with true BAS. She had taken offense at the last meeting when people who were not born here were accused of not being good stewards of the land. She said that many people who had moved here took good care of their land.

Roger Short, Chimacum Valley, said that he had been on the Conservation District for many years. He had also served on many committees over the years since the adoption of the GMA. He said that the last meeting was nice because we had all three County Commissioners present. He had been told that Eric Toews would be the person writing the draft code, but he did not see him present. That concerned him. He thought it was an affront to the thousands of hours the committee had contributed to the county. He thoroughly supported the majority report. He took issue with some of the points made by Ms. Silver. He referred to the information about the 73 parcels in the Big Quilcene River area worth \$8.5 million that could reduce the tax base under the CMZ proposal. He wondered where the \$70,000 in lost tax revenue would come from, probably from everyone else paying higher taxes. He referred to Ms. Silver's comments about species adapting quickly. If that was so, they should be able to adapt to some of the conditions of other activities going on. He said that in the 1950s the government required the loggers to remove all of the wood from the streams. Now, they have done a 180 degree turnaround and say that the wood has to be left there. In the 1950s, the farmers were asked to plant canary grass, which has clogged the streams and robbed the dissolved oxygen out of the streams. In 1980, a Fish and Wildlife biologist told him that fish do not need oxygen.

James Fritz strongly supported the majority report. There are all sorts of factors affecting salmon. He referred to the number of sea lions eating salmon and the strip mining of the oceans by big trawlers. The fish hatcheries have blocked off the streams. The only bright spot has been the adjacent land owners. He asked the commissioners to take the majority report and make sure that the county and adjacent landowners work together in harmony and continue the progress we've made over the last 20 years.

Jim Hagen said that he had heard that the DOE Guidance would result in smaller buffers. If that was the case, he wondered what we had been fighting over and what WEC had been fighting over for the last six years. He wondered if they were trying to tell us that we were fighting for less protection than what was in our current ordinance. He referred to all the cost of the appeals and county staff time that has not been able to go to conservation on the ground. Concerning costs, he had heard comments about the environmental ethic in Jefferson County and that we can't do adaptive management because it costs too much and we don't have the resources; it was easier to adopt DOE. He thought

to himself about the talk about sustainable living, growing our own food, and that old tradition that he thought we were proud of; we were proud of our environmental ethic. Yet he heard us talking about deferring to a Seattle ordinance to protect us from Californians moving in here. He was proud to hear from the majority presenters that this was a home-grown system. We had heard Mr. Latham talk about the successes of all the volunteerism. That success was due to the integrity of the people. Concerning the expense, there is an expense to following the DOE guidelines, because we have no baseline data. So we have to establish all those baselines, which will entail hiring new county staff. What will that cost? He supported a home-grown system crafted by Jefferson County citizens and for Jefferson County. He was proud to have been on that committee.

Frank Hoffman said he had attended many of the Critical Areas Committee meetings and was impressed by the amount of work they did. His take was that the Planning Commission was faced with the future and with development. He expected our population to increase. What the Planning Commission was tasked with was protecting the resources in the face of that development. It seemed that it was a mistake to hope for the best, which was what he thought the majority recommendations did. It did not make sense to him to fault DOE for protecting the resource; that was its charge.

Norm MacLeod said that at one point it was suggested that the county adopt a NEMO (Non-point Education for Municipal Officials) program. He described such programs, stating that they were very expensive. He said that the state was starting the program. When developed, the county could use it as a resource. We have been told that monitoring is very expensive and citizen monitoring programs were not reliable. He described citizen monitoring programs being done in other states under the EPA. He said it was very do-able and a very cost effective way to do monitoring. Ideally you will allow the Conservation District or other non-regulatory agency to work with the landowner when problems occur in order to fix it. The residential BMPs program that Dr. Brooks mentioned that NRCS is developing is a very good solution for us because it will provide the resources and information we need to put it on the ground here. The DOE, DFW, and Western Hearing Board have already bought off on the NRCS science package qualifying as BAS. There was no reason not to go with that.

Jim Tracy, lead counsel for Fred Hill Materials and a member of the Critical Areas Committee, read his comments into the record and provided a copy of his letter for the record. He said that the WEAN case was a critical case for the Planning Commission to read. In part, the reason the Western Hearing Board upheld Island County's programs was because the Island County Commissioners made a declaration that all agriculture in all areas was an important, fundamental part of the rural character of Island County. Our BOCC needed to do the same thing. The Planning Commission was told at the previous meeting that critical areas protection trumps the planning and other requirements of the GMA and does not require balancing with the other goals of the GMA. That information was false and was contrary to Washington case law. If the Planning Commission and the county adopted such an ordinance, it would lead to a successful challenge to whatever ordinance is adopted. He cited a particular case. The BAS must be included but it must be balanced with the other goals of the GMA to fashion locally appropriate regulations based upon evidence and not on speculation or surmise. He said that the DOE BAS has been upheld in cases before the Hearings Boards because it was the only science in the record. The Western Hearings Board has refused to establish a bright line definition of BAS. Instead, the Hearings Board stated that it would consider claims regarding BAS on an individual basis with one criterion being the scientific evidence contained in the record. He said that the science provided by Dr. Brooks mirrored the science cited in Island County. He said that this Planning Commission and this BOCC needed competent, independent legal advice to be an integral part of the drafting of a CAO proposal. He said he would continue to monitor the legal issues as they came up and report

to the Planning Commission for the record those cases he thought were pertinent.

Bill Wheeler said that, while he realized this was a rural county, he took offense that one of the commissioners was knitting during the meeting. He thought it was disrespectful. Some others agreed while others disagreed. One woman said she attended many meetings where people knit, saying that it did not take away attention. Brent Butler reported that the commissioner had asked him about it and he had said he saw no reason if it did not distract.

Teren MacLeod said she was a realtor and had worked with a lot of people who had come to this area and also people who had lived here for a long time. One of the things about our special spot in the world was its special environmental attributes. There have been comments made that people coming in from the outside could not be trusted. She did not think that was a valid comment. The people she saw who wanted to come here were coming here for the special attributes we had. She provided a couple of examples of people who wanted to do small sustainable agriculture. They have not pursued investing in this community because of the uncertain regulatory climate that is here. Another issue that comes up is the poor mapping that makes it very difficult to get things done on the ground. It adds confusion and costs. She related an incident where a family went into DCD for information about a property they were going to purchase and wanted to build a pole barn on. The mapping showed a wetland that DCD said may have to be delineated. The result was that five families spent a half day on Sunday going to look at this supposed wetland area. The actual wetland was 450 feet away. The mapping says that there is a margin of error of plus or minus 400 feet. That needs to be fixed. It makes it very difficult for everyone involved. How do we fix it if you don't have any money to fix it? Yet, she was also hearing that the prescriptive approach with more regulation and more information would cost money also. Where was that coming from? We don't have money for adaptive management, but we do have money for enforcement? She did not understand. She favored the committee majority report. She said it was easy to make rules for people when they don't apply to you. She encouraged the Planning Commission to remember that this code will apply to the people of Jefferson County.

Renee Bush said she was one of the newcomers in the county. Before they closed on their property, they had taken a course on forestry stewardship for their land. She was an environmentalist and a rural landowner. She said that it seemed that people thought you could be one or the other, but that was not the case. Most of the people who had spoken are both. The voluntary programs that were in place showed that people were being good stewards. Education was a lot cheaper and much less divisive than onerous regulations. One of the unintended consequences could possibly be that people that cannot make a living on the land will sell it to developers, which is exactly the type of thing we don't want. She said that before they built their house, they planted 2,000 trees, which will not be harvested before her grandchildren are grown. That was the best statement of the kind of stewardship and responsibility they felt for their property. She thought most of the people in the room felt that way. She encouraged the commissioners to take that approach and give them the respect that she thought they had earned.

Mike Belenski said he was a licensed professional engineer. He appreciated Dr. Brooks bringing it to light that the facts were skewed by DOE. In 1999 he won a lawsuit from the county that allowed him to see the personnel records of county employees. It provided a chance to see what their training was that allowed them to administer and/or write regulations for this county. He had filed a public information request for similar personnel information for DOE employees. The response he got back from DOE was "No". He thought that was wrong. His point was that, before we accept the WEC and DOE "kool aid", he was glad that we had people like Dr. Brooks who told us who he was and presented facts that we can interpret and make sound decisions on that affect

peoples' lives. He took exception to Mr. Downey's comments at two previous meetings that he considered were unprofessional.

Wayne King, PUD Commissioner, referred to Dr. Brooks' remarks about the DOE BAS. He referred to a meeting on water where four people from DOE provided four different opinions. He described another example of the water system in Quilcene where they were fighting over the amount of water right. A DOE representative asked him where in Eastern Washington Quilcene was. He thought you could have ten DOE people in a room and have ten different opinions. Another example was that they had one employee who spent 70% of his time working with DOE. He referred to the Discovery Bay Golf Course where they had an opportunity to purchase their water system. He said that everyone has heard about the mandatory water metering that we will all have to do. The golf course had 4.5 years of accurate meter readings for their use. DOE wanted aerial photos to back that up. He questioned why, if DOE wanted BAS, they did not want to use the good information that was available. That was where Dr. Brooks was so "right on". He supported the majority report.

Richard Hild referred to the same DOE meeting referenced by Mr. King. They kept asking the DOE hydrologist questions, but he tried to ignore them and continue on with his presentation. He finally said that they had no idea if what they were saying was true or not, but they were going ahead with it. That was an example of their BAS.

Jo Yount expressed appreciation for all the work the committee members have done on both sides of the issues. She supported the minority reports. She thought it was important to look at both aspects of citizenship, whether you are a landowner in the valley or a landowner in the towns. We all have rights and responsibilities. She thought there were really good things on both sides of the reports. But if she had to choose, she would support the minority.

D. ADJOURNMENT

Ashley Bullitt wished to clarify that the community objected to the idea that we had to do "X" because a lot of new people are coming. She thought the point was that the population of the county was skyrocketing. That meant we would have a much bigger, more diverse, more complex society here. It would become more difficult to guarantee the integrity of the county. She thought it was better to formulate it in a way to address the complexity and size of a society that demands guidelines.

Peter Downey asked when the Planning Commission had to have its recommendation to the BOCC. Al Scalf replied that it was required by August.

Al Scalf provided several ideas for what the commission could do in its next meetings. Edel Sokol asked about the code writer. Mr. Scalf replied that he was briefed after each Planning Commission meeting and was awaiting direction from the Planning Commission.

JD Gallant said that, upon the presentation of the reports, everything about the committee is automatically discharged; it ceases to exist as of this meeting. The reason for that was clear - the Planning Commission now had to deliberate as a group. The committee members could have their input during that deliberation, rather than organized input.

The commissioners discussed the agenda for the next meeting. Peter Downey suggested that the commissioners take up the Preamble, Foundational Principles, and Administrative sections. Henry Werch wondered whether it was necessary to visit those issues because it may bog the Planning Commission down. He thought it was more important to first see how much agreement the commissioners had with regard to the reports. He suggested following the format he had suggested previously by email, using the table of contents as a

framework. He thought if the Planning Commission could get into the "meat" of the ordinance, the commission would find which foundational principles would support its recommendations.

Al Scalf described how he suggested the Planning Commission needed to arrive at directions for Eric Toews, with the commission taking motions based upon the data before the commission, the more motions the better. Then Mr. Toews could draft an ordinance that could go to public hearing in about July. Mike Whittaker asked if Mr. Toews would be spending time with the Planning Commission directly. Mr. Scalf replied that he would be present once the commission got down to giving directions.

The commissioners agreed to take on the Agriculture issue first at the next meeting.

The meeting was adjourned at 11:00 p.m.

E. APPROVAL OF MINUTES

These minutes were approved this _____ day of June, 2007.

Peter Downey, Chair

Cheryl Halvorson, Secretary