

Critical Area Ordinance Regulatory Reform Task Force
September 5, 2019 5:30 PM
Tri-Area Community Center Library Meeting Room
Draft Minutes

Participants: Kevin Coker, Craig Durgan, Teresa Michelsen, Al Cairns, John Bellow, Steve Mader, Donna Frostholm A quorum (7 of 9 members) was present.

Absent: Robin Fitch, Jean Ball

Support personnel: Patty Charnas, Greg Brotherton (for beginning), Linda Herzog, Cass Brotherton, Lisa Grueter, Principal, Berk Consulting (on skype)

Audience: Gordon Anderson

General business:

Meeting called to order at 5:30 by Herzog.

- Commissioner Brotherton thanked the task force for their work on this complicated task. He requested that once code concepts are agreed upon, they be sent to staff to work concepts into a draft code.
- Agenda accepted as presented
- Herzog explained that the large meeting room (“dining room”) it is not available for all the TF meeting dates. TF members should watch for email to notify which meeting room will be used for each meeting.
- August 8 meeting minutes were accepted with the following changes to two paragraphs:
 1. The Task Force agreed that performance-based requirements should replace prescriptive mandates where possible. The County should clearly describe the beneficial functions and values of areas designated as “critical areas” and should describe the outcomes that need to be achieved for these areas to retain and/or improve their values and functions. At a minimum the CAO needs to require and assure no net loss. But further, the Code should provide incentives for applicants to voluntarily design their projects and plan their uses so that critical areas are not only protected but enhanced, and function is not degraded.
 2. The group agreed that describing the boundaries of a critical area, placing a buffer of a specified number of feet around its perimeter, and then declaring what cannot be done within the buffer (or naming things that are “allowed” within the buffer) misses the point. The more useful approach is educating developers / farmers / applicants what a critical area is, why it’s important, what it needs to do to remain a valuable component of the ecosystem, and helping them to find ways to protect the critical area and its functions.
- August 22 meeting minutes were accepted as presented and discussed. See TF dedicated website for final version of the Aug 8, 2019 minutes.

- Herzog explained that she will be developing a “progressive consensus log” to track the TF’s conclusions and to aid with development of its advisory report.
- Task force agreed to name the two regulatory paths as follows:
 1. Prescriptive = Option 1
 2. Performance-based = Option 2

The TF recommended that both options will be available to permit applicants.

- The Task force agreed to focus on the performance-based regulatory path first at this meeting.
- Several task force members expressed desire that material be send in email rather than being only posted on County web site.
- Task force members expressed concern that the established timeframe does not allow for a thorough discussion of the issues. After the break, Charnas explained that Jefferson County has received a Legislative appropriation of \$1.422 million to be administered through the Public Works Board for final design of the Tri-Area sewer system. However, the Public Works Board intends to withhold the funds until Jefferson County completes its update of Critical Area regulations. County elected officials and staff are working to see if the Task Force’s deadline can be extended without jeopardizing the State funding. Coker, as representative of the Planning Commission, agreed the needed public hearings on both the TF and the Planning Commission recommendations could be held simultaneously. The Task Force agreed with the importance of the Tri-Area sewer system and agreed they want to continue to focus on Agriculture as the most challenging Article of the CAO. They may not have time to address other CA Articles within the allotted time. Charnas offered to keep the Task Force informed of externally-imposed deadlines and realistic options for the TF redefining its scope and completing its work..

Discussion Guide PART I Questions

Q#1: Does the TF want to explain the purpose and explicitly name resource concerns (i.e. critical area types, their values and functions) in its “alternative standards” code? BERK bullet at bottom of page 1, and this from top of page 2: “Since the County’s benchmark monitoring provisions address both water quality and habitat, having a parallel intent, resource concerns, performance standards, and monitoring is suggested for both topics.”

TF consensus: Yes, use Whatcom County’s ABCD approach. It explains in plain language what is being protected, the purpose of the regulations, and provides benchmarks for compliance and enforcement.

Q#2: Does the TF want to “type” agricultural uses that are less intensive / more intensive and recommend different rules for ag that anticipates no net loss, than for ag that could degrade CA function? BERK page 2, top bullet. **Note** that Whatcom Co classifies ag operations as low risk to Critical Area values and functions (Type 1), Moderate Risk (Type 2), and high risk (Type 3). Should Jeff Co adopt such a “risk classification” system and direct landowners to the section of the Code relevant to their classification?

TF consensus: Yes, Whatcom County’s typing system is useful and would work here. But definition of the “types” will need to be modified to suit the character of farming and the resource concerns in Jefferson County.

One TF member volunteered that, given Whatcom County's typology, 75% or more of farms here would be Type 1, the rest would be Type 2, and no farms currently in Jefferson County would fall into Whatcom's Type 3. Even so, the TF agreed Jefferson County needs to include a type category for larger impact operations, such as a dairy farm, to allow such farms to operate in a manner to preserve the environment.

BERK, with assistance from the Jefferson County Conservation District will draft a typology appropriate to Jefferson County agriculture in the context of land and resource concerns here.

Q#3: Wd the TF call for stating benchmarks and monitoring requirements in a more lay-friendly manner? For clarifying Jeff Co agency responsibilities. BERK page 2, second bullet. [Note that this is a "what" question; BERK may be able to help with the "how" if the TF recommends changes in this way.]

TF consensus: Yes, the regulations and compliance benchmarks must be clear. The TF also wants to assure that farmers not be held responsible for resource degradation they have not caused and cannot control, such as fish decline due to changing weather patterns or overfishing. Other agencies must be responsible for "global impact" monitoring; farmers are only responsible for implementing their farm plans or adding adaptive management practices if performance falls short. If Ecology or other environmental monitoring authorities detect pollution or hazardous degradation, they must identify the sources and take appropriate remediation action which may or may not involve the ag operator, depending on source and cause.

Concern was expressed about Whatcom County's relatively hands-off approach for Type 1 farm operations; would Jefferson County want to exercise greater oversight? The group agreed that modifications will be needed in the Whatcom example to make "Type" classifications, risk assumptions and monitoring requirements specific to and appropriate to Jefferson County conditions.

Q#4: Does the TF want to treat both existing and new ag the same, and allow use of alternative agricultural regulations by both? BERK page 2, under King County header.

TF consensus: Extensive discussion resulted in consensus around a summary articulated by one of the TF members: "There's no real need for a distinction between existing and new agriculture within the regulations. Existing ag has no reason to come in for a permit (given the broad Shoreline Mgt Act definition of "agriculture") so it probably wouldn't encounter the County in the first place. But if anyone needs to come in for a permit, they should have a choice of the prescriptive option (termed Option 1 by the TF) vs the performance-based option (termed Option2). So it doesn't matter if they are existing or new." Caution was also advised that the regulations should guard against a producer continuing to farm (doing anything within the broad agriculture definition) and inadvertently falling into a prescriptive regulation that causes him/her to lose the use of part of his/her farmland. TF will look to BERK for assistance with wording and CAO placement to capture the concepts discussed here.

Note that Q#5 was removed from the discussion.

Q#6: Does the TF **affirm** its Aug 22 consensus that Jeff Co's CAO should incorporate the Shoreline Mgt Act definition of "agriculture"? BERK page 3, under **State Conservation Commission and New Agriculture** header.

TF consensus: Yes

Q#7: Does the TF **agree** with the State VSP Advisory that the CAO should contain regulations necessary to meet federal requirements for existing and new agriculture? [Even if "existing" and "new" are not treated differently, the Q would remain the same. BERK page 3, same header.

TF consensus: Assure that the CAO is in agreement with Federal regulations. The County should put language in Code that assures Jefferson County meets the federal standards for flood protection for example, so property owners can maintain good insurance rates.

Q#8: Does the TF affirm its Aug 22 consensus that ag land reactivated after a fallow or non-productive period (e.g. 5 years) should not be held to different standards than land continuously farmed (i.e. "ongoing" agriculture"? BERK page 4, under Existing Agriculture and Year Thresholds header.

TF consensus: Yes

Q#9 Whatcom Co classifies ag operations as low risk to Critical Area values and functions (Type 1 / see WCC 16.16.820 D 1), Moderate Risk (Type 2 / see WCC 16.16.820 D2), and high risk (Type 3 / see WCC 16.16.820 D 3). Should Jeff Co adopt such a "risk classification" system and direct landowners to the section of the Code relevant to their classification?

TF consensus: Yes, adopt a risk classification typology, but define the "types" to accurately capture the Jefferson County environment.

Q#10 If yes to Q#9, what parts of Whatcom County's code are favored by (and alternately are objectionable to) the TF:

Q#10 (a) Consider WCC 16.16.830 for [Farm Plan General Standards](#) (BERK doc page 8). What elements does the TF like / not like?

Q#10 (b) Consider WCC 16.16.840 A for Farm Plan [Requirements for Type 1](#) ag operations (BERK doc pages 8-9). What elements does the TF like / not like?

Q#10 (c) Consider WCC 16.16.840 B for (Custom) Farm Plan [Requirements for Type 2](#) ag operations (BERK 10doc pages 10-11)

Q#10 (d) Consider WCC 16.16.840 C for (Custom) Conservation [Farm Plans for Type 3](#) ag operations (see BERK doc page 11)

TF discussion: The Task Force will be unable to critique the elements of Whatcom County's three types of Farm Plans until a Jefferson County-specific typology is created and endorsed by the group.

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Regarding the noted ambiguity of some of the terms in the Whatcom example, BERK representative Lisa Grueter affirmed that Whatcom has in its code a lengthy “definitions” section that BERK will be able to provide to the group.

Other comments:

- TF is given only relevant elements of Whatcom County Code ---may need to look at other parts to see total regulatory picture.
- The definition of “Farm Plan” is not uniformly understood.
- Feeling that DCD does not need to nor are they necessarily qualified to review Farm Plans. If a standing regulatory agency has approved a Farm Plan, DCD should accept that the Plan meets environmental goals.
- Conservation Districts, NRCS/USDA and other agencies are resources that can partner with DCD to make sure CA protection goals are being met. The TF questioned whether some of these agencies might have so narrow a focus as to overlook some critical area concerns?
- Must be sure that the Farm Plan regulatory agency looks at all areas of critical areas or call upon another agency to complete the view.
- Want to be sure that there is adequate ongoing oversight to assure environmental goals are being met.
- It was pointed out that there is an inactive but still existing Chimacum Drainage District. If District is reactivated, the “typing” (risk classification) of farmland lying within the district would be influenced if Whatcom Co. classification standards were to be adopted by Jefferson Co. If the TF recommends development of Farm Plans or Farm Management Plans within the Option 2 regulatory path, the definitions and elements of a Farm Plan must be clarified.

Discussion was stopped at this point. The meeting having run past its agreed end time, Task Force members were asked to email Herzog their individual responses to the remaining questions, and indicate which questions they consider to need full TF discussion.

Next Meeting will be September 19 at the Tri-Area Community Center. Room to be determined by availability.

7:30 Adjournment at 7:43.

Respectfully submitted by
Cass Brotherton, minute taker