

Critical Area Ordinance Regulatory Task Force
August 22, 2019 (second meeting) 5:30 PM
Tri-Area Community Center Library Meeting Room
Action Only Minutes

Participants: Kevin Coker, Craig Durgan, Robin Fitch, Jean Ball, Teresa Michelsen, Al Cairns, John Bellow, Steve Mader, Donna Frosthalm All members were present.

Support personnel: Patty Charnas, Greg Brotherton, Linda Herzog, Cass Brotherton

Guest: Lisa Grueter, Principal, Berk Consulting

Audience: Mike Neilssen, George Yount, Gordon Anderson

Minutes: The Task Force thoroughly discussed a concept that had been included erroneously in the draft Aug 8 minutes -- that Jefferson County CAO should “describe the outcomes that need to be maintained for [critical areas] to retain their value and function *at an optimal level.*” The facilitator offered to remove the problematic phrase and redraft the paragraph to include the concept of “no net loss”; incentives for applicants to *improve* values and functions; and clarification that critical areas have *multiple* (plural) values and functions.

Review the Scope of the TF charter, objectives and anticipated products:

- Commissioner Brotherton and DCD Director Charnas agreed that the original TF charter may be more restrictive than useful to gain the full benefit of the TF’s effort. The Goal is to “craft the most robust and defensible CAO we can, and to do it fast.” If this can be accomplished by recommending adoption of either another county’s or Jefferson County’s code “wholesale”, that would be the simplest approach.
- Director Charnas pointed out that the County’s Regulatory Reform Resolution included six goals for regulatory reform,* and stressed that she believes DCD’s “line-in/line-out” draft gets very close to the desired result. (Task Force members mentioned later in the discussion, however, that the farm community was not satisfied with this proposed draft Code when it was previewed at a fall 2018 public meeting.)
- Ms Grueter assured that if this TF can develop “the what”, BERK Consulting will help with “the how”.

At this meeting the group focused on Agriculture in relation to critical areas. The TF and supporting County officials anticipate that the Agriculture / CAO regulations will serve as a model for consideration of other critical areas sections. Agricultural lands more than other uses coexist much more frequently with critical areas.

- [The TF intends to recommend a significantly new approach to the Critical Areas section of the Jefferson County Code](#), recognizing that such an approach will call for a potential cultural shift, requiring extensive staff training and additional funding support, for implementation to be successful
- According to JC Resolution 17-19, six goals for this regulatory reform program are: protect JC’s environment and public health; make the county code understandable and efficient to follow / administer; reduce burdensome professional studies; allow greater flexibility for minor exceptions that retain protections; streamline permit review; and enhance transparency and accountability of the permit process.

- Clallam County was identified as a jurisdiction that was not prepared for this cultural change within its permitting agency, and consequently suffered lawsuits and set-backs – a cautionary tale for other counties considering this approach.

Agriculture: Alternative Protective Standards:

- **Whatcom County** has a two-branched approach, a standard prescriptive regulation for critical area protection, and a performance-based approach termed the “Conservation Program on Agricultural Lands” or CPAL, that has been in place since 1997. It has gone through two major revisions including a “field trial in court”, has produced great results with support from the ag community, and it became the foundation for the State’s Voluntary Stewardship Program.
- The TF discussed the **definition and content of a “farm plan”**. In the Whatcom Code the farm plan is a “stripped down” version of USDA’s Natural Resources Conservation Service (NRSC) Conservation Plan. Whatcom County offers ag landowners a Planning Workbook with Checklist and Action Plan, and the Whatcom County Conservation District provides support and technical assistance at no charge, to create a plan for review by the County Planning and Development Department.
- Likewise, the Jefferson Co. Conservation District, represented on this Task Force, has the capacity now to provide the support needed by Jefferson County farmers to develop a farm plan of the appropriate content for the small farm holdings typical of our county. Regarding the cost to develop a “farm plan” or like document, TF members spoke of Federal (USDA) and State grants at the level of 50% to 90% and even 100% of the cost of preparing such a plan.
- The TF understands that JC Conservation District has staff dedicated to advising and assisting farmers in the “alternative” regulatory approach under discussion, plus the JCDC acts as a referral agency for other professional assistance not directly available on staff, including close partnerships with NRCS staff in Port Angeles, WSU, WSDA, other County Conservation Districts, and the WA State Conservation Commission.
- One area of concern in the Whatcom Code is that they specify that **farmland fallow for more than 5 years** must be considered “new” when land owners seek to bring the land back into production. One TF member advised that the practical result of such a rule is to remove good ag land from farming. Another member shared that the Local 2020 Climate Action Committee supports and encourages local agriculture, recognizing that food security for Jefferson County depends on local farm productivity.
- The Task Force consensus is that [there is no benefit to and there should be no regulation in the Jefferson Co. Code regarding “fallow land” duration](#), or changes in products and practices that are clearly part of agricultural production and farm management. TF members and the BERK consultant will seek further information from counties that have included fallow-land considerations in their regulations.
- SHORELINE MANAGEMENT ACT / GMA VOLUNTARY STEWARDSHIP PROGRAM **DEFINITION of agricultural activities**, which has been incorporated in WA code as RCW.90.58.065, was discussed and found agreeable
- Its content: *“Agricultural activities” means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse*

agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

- This definition, already adopted into WA law, broadly and thoroughly defines “agriculture” as TF members understand the scope of ag activities, and it obviates the concern with fallow land being classified as “new ag” when it is returned to production. [The TF consensus is to incorporate this definition into JC Code](#) unless there are reasons to the contrary.
- Ms Grueter of BERK spoke to the issue whether inclusion of this definition would make moot the question of new vs existing ag. She advised that it would depend on how it works in the Code . . . If you do it more based on type and no net loss, and have performance standards that relate to the risk (as King County has done), it would likely be okay. Further, she advised that the State Conservation Commission’s statewide advisory group has recently released an issue paper on new vs existing ag. She offered to share that paper with the Task Force.

Agriculture: Application, Exemptions, Reporting

- The [Task Force agreed that the desired approach at this point is a dual track for permitting Agricultural activities that may affect Critical Areas](#): one track with prescriptive rules and the other focusing on performance-based standards.
- With a performance-based system, the County could require a “farm plan” but would depend on partnership(s) with other agencies such as the Jefferson Conservation District to work directly with applicant farmers to prepare a plan that fulfills the requirements of performance-based standards.
- The TF understands that the JC Conservation District does have the financial capacity to support this kind of partnership and the technical support to farmers that would be necessary. Partnering in this way would both reduce burden on DCD staff and better serve customers.

For the next meeting (Sept 5), Berk will prepare a comparison of Jefferson County’s draft code addressing Agricultural land use and Whatcom’s relevant code plus other ideas from other sources BERK identifies as helpful to the Task Force’s deliberations.

Next meeting will be September 5 at the Tri-Area Community Center. The TF requested that its meetings be held in the larger meeting room (the “dining room”) at the Community Center if that room is available.

Meeting adjourned at 7:35pm.

Submitted by,

Cass Brotherton (volunteer minute taker)