

COA Citizen Review Committee

2.29.08

Meeting Notes:

In attendance:

Stephanie O'Day

John Evans

Barbara Thomas

Ryan Drum

Amy Windrope

Stephanie Buffum Field

Jim Slocomb

Todd Goldsmith

Tom Cowan

Public: Bob Myhr, Geoffry Holmes, Steve Ludwig, Deborah Arnott, Stan Arnott, Cladia Bradly

Comments from Committee on Strategy for Protecting Groundwater:

Amy: Pg 6, #6, is vague and doesn't clarify BMP's.

Shireene: We will go through the UDC and then come back to the BMP's and make more specific.

Todd: The information about shoreline master program was slipped into the document and we haven't reviewed this.

Stephanie O: What is the purpose of this strategy? Is this to be disseminated to public as a guideline?

Shireene: Yes, some of the changes are to the UDC and some are to education programs. This document is intended to show where we are going and then we change the Comp Plan and then we change the UDC which legally shows the changes. This document shows our overall approach. We can take out the shoreline master program information and put into the fish and wildlife section.

John: Lets get back to the UDC and Comp Plan.

Tom C: Provide your comments to Shireene via email and then Shireene can send another version.

Todd: Lets take out the shoreline stuff and I will provide my other comments off line.

Decision: Full consensus was stated: Delete shoreline master program section beginning at the bottom of page 2, comments can be sent to Shireene and this document will be on the next agenda.

The final document will have a dissenting opinion attached to it.

Comp Plan Comments from Committee:

John: no net loss needs to be referenced to a particular date. Ie: comp plan adoption.

Barbara: Change #7 from harm to no net loss in order to be more specific.

Jim: No net loss: there have been catastrophic declines in eelgrass in the county and then set a date that is further back. For instance, 2000, so that what we see today is not the baseline.

Stephanie O: Swinomish Case do not direct counties to enhance or restore areas, only comply from no net loss from individual projects. For instance, theuffers should be restored and the other side pointed out then the land would be taken from the farmers. There is a need to balance the directives under the GMA. GMA does not require restoration or enhancement. I would like to see an encouragement of restoration.

Shireene: The date is a good idea. No net loss went into effect should be used. The legal principles come from work with CTED.

Tom: Is it acceptable to plug in the date from the state?

Stephanie BF: This is not a good approach. I need to hear from additional authority to get some legal horse power. What does WDFW, What does ACOE say, What does DOE say? We need to know thinking on the no net loss and see legal framework.

Stephanie O: The no net loss is specific to projects and not a cumulative look across an area.

Todd: I think the date of the law is the day it is accepted and passed by the County Council. It isn't fair to look back three years.

Amy: #7: I am not comfortable if we apply regulations to pre existing uses.

Jim: We need to get CTED to tell us where this line came from.

Stephanie O: We need to see where #7 came from and see what the context is.

John: No net loss means to me that if we have 1,000 acres of wetlands then in 30 years we need to have 1,000 acres of wetlands. We are in a situation now that things are evolving, we are gaining forest and losing ag land. But, are tasked with a County wide ordinance so we need to choose a date.

Barbara: The consensus of this group, #7 is a dangerous sentence. We need to take the sentence and hold in abeyance.

Shireene: From Strategy for Protecting Groundwater, 1/31/08, footnote 9 explains Growth Board stand on #7.

Tom C: There is agreement around a date.

Stephanie BF: What is no net loss for each of the five areas. What about no net loss for CARA versus no net loss for eelgrass. There is going to be a lot of talk about what date to use and we need to spend time thinking about it. I agree with date of codification put forward by Todd.

Jim: I hear the apprehension around #7, the retroactive clause. But, since it is from the state boards, that carries greater weight for me.

For dates there are detailed visual assessments, if we were to pick a database date then looking at Shorezone data from DNR.

Ryan: I speak against freeze framing reality; it isn't possible to choose a date. What is harm? Codifying that gives regulator's a vicious tool to use against property owners. This is a dysfunctional exercise, it is imprecise. 99 or 100 angels on the head of the pin – it is that kind of argument.

Barbara: Things are not precise. But, rather than abdicating, we should make our comments as precise as possible. A sentence like #7 needs to be clear and gets at intent of

the State and I think the word harm is very imprecise term. If we are going to deal with net loss and a date, then we put net loss and then we are consistent.

Stephanie O: This needs to be refined and defined and the place to start is The Clallam county case stated that the intent of the legislature that the counties would exercise some control over existing uses and that does not translate into #7.

Todd: How does this fit with Swinomish/Skagit county case? They are closely tied.

Stephanie O: If you apply this to old development- would you remove the Boeing Field?

Tom C.: There is a huge amount of discussion and there is agreement on the issue:

Decision: Request legal council to assist with defining #7.

The language of #7 is not acceptable to the group.

To Do: Stephanie BF: Will look at information about a how a date from which no net loss would be determined and what the legal framework exists in other locations.

Jim: Will ask the science subcommittee of the MRC about what data sets exist to help determine date.

Stephanie O: Will do some research on the date from which no net loss will be determined and will look for growth board decisions.

John: No net loss begs the question of when – ask CTED.

Shireene: will call CTED.

12:

Todd: Define what is adaptive management should be defined in the UDC's at the beginning.

Stephanie BF: In CARA, regulate those uses: where did those uses come from? I need to look at what we talked about earlier.

Barbara: We have a tradition of “storing” old cars and we certainly haven't done anything about them from an aesthetic standpoint. But, now we are talking about CARA and we know that those vehicles are filled with things that shouldn't end up in our water system.

John: One person's trash is another person's treasure. Unless someone is operating a junkyard then I think we leave cars alone.

Shireene: We could put into education that people should pump out the fluids.

Public Comment

Debby : CARA's need to be identified and I think DOE needs to identify those areas of recharge. I think they are doing more refinement and I want more information

Steve Ludwig: In Comp Plan , Paragraph 5, in first section. Substantially consider BAS? Where does that come from, GMA says, shall include which is quite different. Does anybody remember the timeline for developing the CAO? We were supposed to have this done Dec. 06.

Bob Myhr: Thank you to the committee and your service to the County. I really appreciate your work. You are constantly working at nuances and I appreciate your work.

Patty Miller:

- ~#12: if there is adequate information about Critical Aquifer the county will fund an adaptive management program: what is the cost to the community of this? If the cost is high, it should be captured in the funding grid.
- ~Section b: This language needs to be checked for consistency with other sections of county code.
- ~Under definitions the Director can assign a designee, concerned with the type of decisions that may be made by the Director or by a designee.
- ~CARA #1: under policies: where it says “in conformance to state law” when you go to the WAC’s there is a list of considerations that don’t actually provide guidance. It is vague, would prefer to see a more specific list that was locally generated.
- ~D: wetland: Reference the wrong section – it is actually section 21.
- ~Concerned with using DOE’s new wetland delineation manual. Concerned that it is particularly onerous.

Todd: Paul Anderson from DOE would have large compliance issues if we did not use the new DOE Manual. Despite the fact that it is onerous, we have to use it.

Stephanie O : Go back to Swinomish Case: they used the no net loss from the date of accepting the ordinance.

Jim: Program works adequate to detect change, there is some funding and I would like our policy to be scientifically valid and that requires adequate funding but the focus should be on an adequate program.

Reconvene after lunch.

Policies 4.2A.1-9:

#8: What does it say? It says that you can do rain water catchments.

Todd: Water catchments are not legal in the state of Washington – you need a water right?

Jim: What about future development will not permanently deplete existing water supplies.

Todd: 1.b LOS = level of service.

Barbara: It is earlier in the document and does not need to be spelled out here.

Todd: Should include non-potable water.

Barbara: only has authority over potable water, the state has control over non-potable water.

Stephanie O: Why do we need to reinvent the wheel – lets let the experts on the Water Resources Group weigh in on this and guide us. We are not the experts. There is a committee looking at de-sal, rain catchment etc.

Tom C: The general point is that we need technical help on this.

Barbara: Where is the de sal information?

John: Lets have the Water Resources Group look at this and check our work.

Shireene: This is on their agenda at their next meeting.

Jim: What about available and adequate in stream flow?

Stephanie BF: WE need a whole new section on de-sal, recommend 2.4.e

Decision: Consensus to add desalinization section.

Todd: It is my understanding that the county does not allow a gray water system. You have to remove it to be approved by County.

Barbara: Need to let Planning Department know that gray water systems are allowed.

John: We need a section for gray water systems.

Decision: Consensus to add section on gray water systems.

Shireene: We need to look at state regulations and ask how the Health Department to clarify.

Section 4.2.C: the County is already doing this.

4.4.D.1-5:

Todd: 1c address intra county water transfers.

Stephanie O: We should encourage the use of de sal instead of well water. And allow for future development.

Jim: Full disclosure, I run a de sal plant. In this world where we use best available science or we monitor, it strikes me that the science is uncertain and the monitoring could be quite onerous.

Stephanie O: De sal systems are used all over the world and are used for good sound water supplies. They are very professional. There are standards that are tested and regulated.

Jim : I am not opposed to looking into it. But, we need to think about the small scale systems.

Stephanie: not sure if the county has the ability to monitor.

John: The monitoring would be paid for by the property owners. They are expensive and they are energy consumptive. And there is increasing interest in talking about build out and that is an interesting conversation. But, the density on the shoreline is not changed and there aren't a whole lot of new parcels. Two de sal plants on a shoreline of 10 acres is not a whole lot.

Jim: The amount of small parcels on the shoreline is astonishing. Dilution effect is true and correct. That is not the case in Mud/Hunter, Reid Harbor etc. The point is location is an issue. Eastsound does not have a high turnover. Maybe these discussions should include a location component.

Stephanie: Perhaps we need to park this somewhere and get some expertise.

Todd: Let WRGroup weigh in on de sal.

Stephanie O: Our job is not to stop development but to protect the flora and fauna. And we need to weigh the impacts of de sal against the pumping out of a well for ten parcels. De sal is allowed now and is regulated by the state. I think we will see that de sal has a much lower impact.

Jim: Trapping water for small scale systems is important for retaining in stream flow.

Barbara: Lets talk about small streams – how many do we really have in this county.

Shireene: We need to have Mark and Vicky and Barbara and the Water Resources Committee.

John: Part of this document will be opinion. The idea that it is all science is not true. From my experience with ponds, it provides habitat, and place for fish and frogs. And the idea that the streams will get dry is silly.

Jim: There are more than two streams with salmonids, and the overland flow is really important for adding nutrients, changing temperatures.

Barbara: There needs to be a balance between stormwater run-off and containment issues and we need a much larger discussion.

John: The whole point is that I have a pond that irrigates about 5 acres of pasture that then feeds a heron rookery and then the birds feed in this area all summer long. The federal government has spent a lot of time and money creating ponds and the idea that this is bad for the environment is silly.

Barbara: The ponds not part of in-stream flows are totally different in character from those ponds that are part of a stream.

Tom: Recommends having a robust discussion in fish and wildlife section on this issue.

Decision: new section of de –sal and a new section on gray water and we are going to put off the discussion of in streams flow and ponds and how they relate to stormwater issues. Shireene will bring additional experts to this discussion who will address these issues at the next meeting.

Thoughts on how to proceed from Fish and Wildlife Section:

Shireene: We have no in house experts and we have no help from State WDFW so not sure it makes sense to do a staff recommendation.

Jim: We have been stewing at the MRC for several meetings and we have had no success. And the balancing that is going to be required by the Fish and Wildlife section is substantial. I propose that there are some areas where we have good local information and expertise. Particularly in forage fish and take it on as a single subject. That would fit in and could be done in a month. Assume that the state is not going to give us any help, we do have local expertise. We need to reach out to them to provide the back and forth. Take one subject and work through it and then get moving. Then pick off the next one. Take a simple first step where we have documented best available science and local expertise.

John: We are going to have a hard time coming up with consensus. Forage fish will be controversial. I believe in conservation but I need to know what the critters are and the habitats they use. We need to logically determine that their numbers are shrinking- other wise this is impossible.

Shireene: You will get that list.

John: You need to notify the property owners to let them know that we are going to be affecting their properties.

Stephanie O: We need someone to provide an overview of forage fish, we don't need an enormous amount of information. I met a guy who's job it is to get everyone to work together.

Stephanie BF: Lets peel off forage fish and look at the regulations and have the conversation. It would behoove us to start there. 12 linear miles of shoreline are impacted by forage fish.

Stephanie O: Need to know what other counties are doing and we need to figure out how to balance these interests.

Jim: Eelgrass is easy as well. We have a map and can look at how many parcels have eelgrass. And, we can get it going for eelgrass as well.

Stephanie O: We need to look at what is happening with mitigation with eelgrass and I think that needs to be codified so that everybody knows where we are headed. And, we end up with no net loss.

Tom: We have a problem with expert help. Jim is suggesting that we parcel up the species. And, it was suggested that we get a technical committee.

Stephanie O: We are required to consider BAS but due to the competing goals we are required to balance those goals. SMP does give priority to enjoyment and homes. We have a code that says we can have a dock and if we want to have a code that says no dock then we can't get there through CAO. I think we need an independent tech. committee.

Shireene: We won't be able to be picky, we are asking for volunteers. The requirements of the GMA trump the goals of the GMA. And if we deviate from BAS then we do have to monitor and justify.

John: What are critical areas? The forage fish that seem to be doing fine with the current regulations so I don't know what needs to change. We have way more forest cover now than the logging and we have a huge amount of change. We have more and more land that is not developed or developable. We need to decide what animals are threatened and what is an anti-people initiative.

Public Comment:

Geoffrey: This aspect of GMA mediates the impact of people and other aspects that disallow. Part of the GMA is to control sprawl and preserve the things that make it worthwhile for people to live here. I think the sewer district on Lopez has a lot to offer to show how to develop in a sensitive way.

Next Meeting: March 20th. Friday Harbor, in the morning.

Information: gray water, de-sal and go through the UDC and then revisit the sections we shelved today. Do the regulations first with Tom in attendance.

Legal information will be provided by Committee and by Shireene