

# MEMORANDUM

**To:** Jefferson County Planning Commission  
**From:** Critical Area Ordinance Committee (CARC)  
**Date:** May 1, 2007  
**Subject:** Fundamental/Foundational Principles and Values –

The endorsing members of the Critical Areas Ordinance Committee (CARC) herewith transmit to the Jefferson County Planning Commission these statements of Fundamental/Foundational Principles and Values:

1. In recognition of the full spectrum of the goals of the Growth Management Act (i.e. adequate infrastructure, control of sprawl, transportation, housing, economic development, property rights, timely and predictable permitting, natural resource industries, open space, environment, citizen participation, public services, historic preservation and shoreline management), the fundamental constitutional property rights that are implicated, and the need to assure that each goal of the Act is fully balanced against the other goals of the Act, considered, and incorporated into any recommendation for regulation under its authority, the CAO Sub-Committee recommends that any regulation adopted by the Jefferson County BOCC, pursuant to the Growth Management Act including the required update of the Critical Area Ordinance currently being prepared, be based on a stated principle of doing the least harm to the rights and privileges of the citizens/property owners possible while furthering the goals and achieving all of the objectives required by the act.
2. Regulations adopted by Jefferson County should be clear, concise, and written in “plain English” so that the citizens of the County can know what is expected of them. The use of jargon, unexplained references to other portions of the code or other external documents not readily available to the public should be avoided. Where possible, as in the case of the Critical Areas Ordinance, regulations should exist as “stand alone” documents that contain all of the information that a citizen would need to understand how to comply with the regulation.”
3. Regulations adopted by Jefferson County should be based upon clear statements of the rationale/reason for the regulation (i.e. a clear legislative statement of the legitimate public purpose to be addressed by the regulation), the expected effectiveness of the regulation to address the identified legitimate public purpose, the means to be utilized to ascertain and assure that the regulation has its intended effect (i.e. for monitoring and evaluation), and for timely modifying or rescinding the regulation if it fails to achieve the intended result (i.e. adaptive management and a “sunset clause”).

4. Regulations adopted by Jefferson County should state the projected direct and indirect costs of their implementation, by whom these costs are borne (i.e. the cost to the general public and the cost to the landowner applicant), and contain a process to ascertain whether projected costs are experienced in practice. Where regulations advantage the public good and disadvantage individual citizens, the financial burden of the regulation should be largely borne by the public. Regulations adopted by Jefferson County should not duplicate existing regulatory programs by any state or federal agency.
5. Regulations adopted by Jefferson County should be limited to regulatory (i.e. mandatory) language only, and avoiding language which involves encouragement, equivocation, vagueness, the appearance of coercion, or educational rhetoric or phrasing inappropriate to a regulatory enactment.
6. Regulations adopted by Jefferson County should clearly indicate which portions of the regulation are mandatory (i.e. required by law) and which are discretionary (a voluntary choice by Jefferson County to exceed the minimum requirements of state or federal law).
7. Regulations adopted by Jefferson County should be accompanied by a clear statement of the BOCC's analysis and consideration of the impacts of the regulation on the property owners affected, and their reasoning as to why the regulation is the least onerous alternative method for protecting watershed functions and values. Regulations adopted should assure they will be equally applied to landowners involved in substantially the same activities and possessing substantially the same type of landscape. When this is not done the regulation should clearly and specifically state why one category of landowner is treated differently or advantaged over another.
8. Regulations adopted by Jefferson County should, whenever possible, be supported by and based upon "best available science" that is site specific, based on local facts and circumstances and local scientific expertise where and when available. Applicable locally derived "science" (i.e. locally developed, locally applicable Best Available Science) should always take precedence over Best Available Science supplied by non-local, non-governmental entities and state agencies.
9. Regulations adopted by Jefferson County should provide and/or describe a specific mechanism by which a Jefferson County citizen can petition for modification and/or relief from any portion of the regulation which can be demonstrated to be ineffective, inappropriate or inapplicable to their specific factual circumstances. Provision should be made for such a petition to be initially processed and decided administratively, in an expeditious manner, and subject to appeal to the Hearing Examiner in the method currently provided in the Jefferson County Unified Development Code.
10. Regulations adopted by Jefferson County should contain a specific definition of

“reasonable economic use” in each land use and zoning designation. Further, a “reasonable economic use exception” should be provided which is available to an affected property owner who can demonstrate to the satisfaction of the Administrator that the application of the ordinance prevents the use of the property for the defined “reasonable economic use” (i.e. without requirement to exhaust any other administrative remedy before seeking a “reasonable use exception”). The fee for a “reasonable use exception” application should be minimal, and once the applicant demonstrates that such an exception is necessary, additional processing and/or hearing costs should be borne by the public. The citizens of Jefferson County should not have to pay for the privilege or be financially penalized if they successfully demonstrate (in an application for a “reasonable use exception” or in a final judicial decision) that regulations cause them undue harm or violate their constitutional rights.

11. Jefferson County’s Critical Area Ordinance must be viewed as legitimate by affected landowners to achieve voluntary compliance. If restrictions included in the ordinance are not considered necessary and legitimate, the result will likely be increasing levels of defiance resulting in the ordinance being ignored to the detriment of water quality and wildlife. In this vein, the protection of critical areas should be accomplished in the least onerous way possible.
12. Property ownership is a foundation of the American system. The sense of pride in one’s property and the sense of responsibility for that property can only be realized when there is clear ownership and control of the land.
13. Citizens and their government share responsibility for managing critical areas. In practice, this “shared onus” means that government has a responsibility to clearly document why restrictions are being imposed on private property. In return, citizens have a responsibility to manage their property such that they do not harm the environment.
14. All citizens should share the costs of protecting critical areas. Those costs can be reduced by minimizing the number of special reports and consultations required of landowners.
15. Management of critical areas is most effectively achieved through development of site-specific management plans that consider the specific functions and values of the wetland and the goals of the landowner. Unfortunately, the resources necessary to develop site-specific management plans are not available to every property owner. Therefore, the committee believes there is a need for minimum buffer widths coupled with the practice of monitoring and adaptive management when there is a showing of harm. The committee also believes that landowners should be allowed the option of developing site-specific management plans that will protect the watershed’s functions and values while allowing maximum enjoyment of critical areas and their buffers by landowners.

16. The American jurisprudence system is based on the belief that all parties are innocent until proven guilty. This basic principle should also be applied to the protection of critical areas.
17. Minimum buffer widths have not been defined for wildlife. The committee believes there is no GMA/ regulatory requirement for private property owners to manage their property for the general benefit of wildlife unless a species is listed as threatened or endangered by State or Federal authorities pursuant to a formal listing process, or is within a designated Fish and Wildlife Habitat Conservation area as specified in the Critical Area Ordinance. However, in view of the high value that Jefferson County residents typically have for wildlife, the committee recommends the establishment of small wildlife buffers for wetlands and fish and wildlife habitat conservation areas, based on the habitat scores defined in the Washington State Wetland Rating System (WDOE, 2004). Any further enhancement of wildlife habitats in all landscapes, including those associated with critical areas is best accomplished through a voluntary program supported by education and incentives.
18. Agriculture is both a central and historically important component of the rural character of Jefferson County. A small area comprising less than 2% (approx.) of the landscape of Jefferson County is used for agriculture. The county's citizens are determined to protect this agricultural heritage and to provide future generations with the opportunity to participate in this most basic of human activities.
19. Agriculture occurs in wetlands in Jefferson County. The relatively recent glacial history of Jefferson County leaves much of our county with immature soils not suited for Agriculture. Consequently, much of our historic and ongoing agriculture is conducted in organic soils located in wetlands. The committee believes that the best use of these areas is for continued food production.
20. Agriculture is an evolving activity. Commercial agriculture requires long-term investments in land, machinery and personal commitment. Like any business, farmers in Jefferson County must be allowed flexibility in selecting the crops they grow and when they grow them. Farmers should be allowed maximum flexibility to include long-term fallowing of farmland to practice forestry and/or a change from low intensity farming to moderate or high intensity production without having to apply for permits from county government. This flexibility is considered *a right to farm* ~~farmers~~ that should not be interfered with in the absence of an empirical demonstration of harm. In the long-term, agriculture cannot survive in Jefferson County without the flexibility to respond to current food and fiber needs.
21. The functions and values of Class IV and some Class III wetlands (regardless of size) having low habitat scores (<20 points in the WDOE system) can be protected while the wetlands and their buffers could likely be used at least seasonally for certain uses.

22. The Critical Area Ordinance should not be used as a tool to control growth. Protection of critical areas and management of growth are separate issues. Blurring the line between these two issues leads to a loss of legitimacy of the Critical Areas Ordinance.
23. WDOE (1993) allowed for multiple ratings in wetlands. WDOE (2004) does not include that provision. The committee believes that Jefferson County should allow the multiple rating of wetlands. This will allow identification and increased protection of those portions of large wetland landscapes with high functions and values. It would also allow reduced protection of those portions having low functions and values. Allowing for multiple ratings in large wetland systems is a win-win approach that will increase the protection of truly valuable wetland areas and provide for more flexibility by landowners in managing areas with low functions and values, increasing the perceived legitimacy of the ordinance.

## **Conclusion**

These principles and value statements by the Critical Area Ordinance Review Committee are not intended to avoid protection of critical areas. Rather, they are intended to recognize the demonstrated value of voluntary approaches to natural resource stewardship here and in other parts of America. Further, these statements and values are intended to facilitate the understanding of the Planning Commission and the Board of County Commissioners of the reasoning which led to the specific recommendations of the CARC, and to assist in the balancing of competing goals and objectives in this CAO Update process.