

Objections to Both the Majority and Minority Reports of the Citizen Advisory Committee on Critical Areas Code Updates

by

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I have the following objections to the majority and minority reports which make it impossible for me to support either of them:

1. The general approach proposed in both reports may reasonably be expected to result in the opposite of what they aim to achieve because they penalize those property owners who have protected their critical areas and reward those who have degraded or eliminated them. That may be expected to promote the further degradation or destruction of critical areas and to foster anti-environmental and anti-government sentiments among the public.
2. A buffer is a government-regulated area. That regulation deprives the property owner of his or her decision-power over that area. That is a penalty. Jail is another example of that same general kind of penalty, that is, the deprivation of personal decision-power. It is unjust and contrary to our heritage for people to be penalized when they have done nothing wrong; and it is even more unjust for them to be penalized when they have done the right thing rather than the wrong one. --- The proper approach is to penalize those individuals who do the wrong thing. For example, those who have deliberately polluted water bodies. We have laws to do that and there is a lack of evidence that such acts have been a significant problem in Jefferson County.
3. The definition of "wetlands" employed in their delineation in the processes laid out in both the majority and minority reports is so broad that few members of the public would recognize many of them as wetlands nor can large parts of those areas be assumed to have the same functions and values as marshes or bogs. Consequently, the buffers and other other policies designed to protect wetlands, under the misapprehension that they are marshes or bogs, are in many cases inappropriate. Furthermore, those regulations will not be likely to be accepted by the public, as they do not appear to serve any legitimate purpose for those large areas of the "wetlands."
4. Department of Ecology's new wetlands rating system is primarily based on two reports by Dr. Hruby et al. These are not scientific studies but reports of the results of two meetings convened for the purpose of obtaining support for the adoption of a new wetlands rating system based on some ideas that were, at that time, being promoted by

the Federal Government. However, the attendants at the first of those two meetings repeatedly rejected the idea that an overall score for the value of a wetland could be obtained by combining scores from the various functions. So, in order to achieve their predetermined outcome (that is obtaining support for the acceptance of their new wetlands rating system) the department convened a second meeting for the purpose of supporting the combining of the scores from the various functions. I presume that they did not invite those who had objected strenuously to the combining of scores to the second meeting and had they fail to obtain their desired result the second time, they would have held yet another meeting. Thus, by the evidence of their own supporting literature, their rating system was not supported by the scientific community. --- The majority report the the Citizen's Advisory Committee makes some modifications to the department's new rating system that may reduce this problem, by relating buffer widths to the scores for the specific functions, but the minority report uses the Department's new rating system without modification.

5. Because, the species are not identified for which the wetlands buffers seek to provide protection and habitat, it is not possible to demonstrate that those species are worthy of protection, need protection, that the buffers will provide habitat for them, or that the habitat thus provided can reasonably be expected to meet their needs.
6. In the case of the majority report, the habitat components of that plan from the Buffer Subcommittee were not accepted when that report was adopted by the full Citizens' Advisory Committee but the process from the Fish and Wildlife Subcommittee's report for identifying species of local significance that are in need of protection and the protection that should be provided for them was adopted, instead, to be incorporated into the buffer subcommittee's report. This would have satisfied the previous objection. However, after adopting that process, that change seems to have been forgotten and their final report was produced without it.
7. The Forest Practices Act or elements from it has been adopted in several places in the majority report. However, the Timber, Fish, Wildlife (TFW) negotiations from which it originated only had representation from the timber industry, environmental groups and the Tribes and only considered commercial forestry applications. Consequently, the Forest Practices Act is in many places inappropriate for other types of applications, including residential, agricultural, business, and so on... For these reasons, the Forest Practices Act should be adhered to only in those cases where the County is required to do so.
8. There are compelling reasons to believe that the salmon populations did not decline during the recent salmon crisis, during the 1990's, due to a lack of freshwater habitat. I wrote a book about this, in 1992, before the salmon crisis had occurred, saying that the Washington Department of Fish and Wildlife, in collaboration with the Tribes and leading environmental groups, was deliberately depressing the salmon stocks. --- I personally have no doubt that that was the case, as I was working as a consultant to State government at the time and spoke with several of the principles involved about this, attended some of the public meetings at which these policies were discussed and

decided upon, spoke about this to other individuals within the departments who were involved in the implementation of these programs, and know departmental employees who quit the department on account of these policies. --- However, perhaps, the best evidence (because it should be apparent to a wide segment of the public) that the decline of Washington's salmon stocks was not caused by a lack of freshwater habitat, is that the salmon populations declined in degraded rivers as well as in pristine ones. --
- Another one of the major causes of their decline was the reopening of the West Vancouver Island fishery as the result of the collapse of the Canadian-American Salmon Interception Treaty, due to the South Alaska salmon fishery's refusal to stop intercepting Frazer River sockeye. When, I asked the manager of that fishery why she allowed it, she told me that she had been told to do it by an elected official from her State. So, that, too, was deliberate and political.

There actually was a legitimate management reason from them to have done that, although, I do not know whether or not that was actually why they did what they did. That was that they needed more data from low abundance years in order to obtain statistically significant estimates of the parameters in the Ricker spawner-recruit curve. That is an important management tool and I had (Crittenden 1994) demonstrated the high cost of that lack of statistical significance but, also, that they only needed a few more years of data to obtain statistical significance.

What they should not have done is deliberately perpetrate the hoax that the salmon crisis was caused by a lack of freshwater habitat and use that to leverage land-use regulation. Furthermore, this is still continuing, for, at the public hearing at the Jefferson County Library on their hatchery management plan, their representatives said that they were still holding the stocks in several rivers down for a few more years to obtain more data. I asked about the Samish and Dungeness Rivers and they said, "Yes. They were doing that in both of them." However, I did not ask about the streams and rivers in Jefferson County.

I do not suggest that we should destroy salmonid habitat but it is well to be aware that the loss of freshwater habitat was not and is not the cause of the decline of the salmon stocks. Then the County will be less likely to be misled into taking unnecessary actions for its protection or enhancement.

9. No-touch buffers are not only not necessary but can be counter-productive. The regulation of buffers should only prohibit activities that interfere with the functions of the buffer. Prohibiting all activities is unnecessary and prohibiting activities such as the management of woody growth is counter-productive.
10. Many of the studies cited in the Department of Ecology's review of the "best available science" (That is, *Washington Wetlands, Vol 1* by Diane Sheldon et al.) are not scientifically valid because of methodological problems. Their most common weakness is that they failed to control the various environmental variables that affect buffer performance. Furthermore, many of them were government reports or other types of gray literature that were never peer reviewed.

Another problem with their best available science is that the Department of Ecology funds studies on those issues which they know will be on their agenda in the near future and they tend to provide funding to scientists that generally agree with their viewpoint. Consequently, the studies that are available when the issues arise are a biased sample.

11. Nevertheless, a considerable preponderance of studies indicates that dissolved nutrients and suspended solids can be effectively removed by buffers which have a width of ten meters or less. In some cases, buffers as narrow as two meters have been shown to adequately provide that protection. Similarly, shading, cover, and insect drop can also be effectively provided by narrow buffer strips. Nevertheless, as filtration and the removal of nutrients is one of the functions of wetlands, it can be questioned whether any buffer for the removal of dissolved nutrients is needed, except in extreme cases such as beside animal feed lots. However, some kinds of pesticides and herbicides are not adequately removed even by buffers of a thousand feet or more. They should be dealt with by other means, such as prohibiting their use within an appropriate distance of a water body or wetland.

The great width of the proposed buffers, in the majority and minority reports, which in some cases are in excess of 100 feet, is primarily due to a desire to provide wildlife habitat. It has already been stated above, that the species in need of this and their needs have not been identified. The point that I wish to make here, is to question the right of the County to require private land owners to provide wildlife habitat. --- The private landowner not only has no obligation to provide habitat for the public's animals but could lawfully exterminate many species of them if he or she desired to do so. The preservation and fostering of wildlife is a general public benefit and the cost of providing that benefit should be born by the public in general not by one sub-group of them. Thus, there appears to be no justification for any buffers of more than ten meters in width. Nevertheless, if some species can be shown to justifiably need buffers for their protection, the procedure outlined in the Fish and Wildlife Subcommittee's report would allow for those buffers to be created.

12. Perhaps, it was unintended and simply a matter of viewpoint but both the majority and minority reports contain a certain amount of featherbedding. In particular, the majority report, was primarily prepared by a biologist who does wetland delineations and similar studies for private parties and it requires, in many cases, that such studies be part of the permitting process or it allows them as options; the individual who represents commercial forestry and who has studied small forestry applications, has repeatedly tried to insert the Forest Practices Act into the majority report; the minority report was prepared by environmentalists and provides funding opportunities for their class of people; and the agriculture report was prepared largely by an employee of the Conservation District and another from WSU, and it suggests a heavy reliance on the services that those two government entities provide. --- There is entirely too much self-interest in the majority and minority reports.

13. Much of what I have said above, is that many of the proposed regulations in both the majority and minority reports are unreasonable. In addition, in many cases they are also arbitrary and unduly restrictive or hurtful to the land owner. Two studies by Stanford Professor P.G. Zimbardo showed that the arbitrary, unreasonable, unpredictable and cruel application of power caused deindividuation among those upon whom it was applied. That resulted in their depersonalization, emotionalization, group-membership, and irrational and/or anti-social behavior. There were also personality changes among about a third of those wielding the power, such that they come to devise creative ways to torment those who had the misfortune to be under their power.

His first study dealt with these phenomena in an open population, whereas, his second study, which was the more definitive, dealt with them in a simulated prison setting. However, the difference between land-use regulation in Jefferson County and his mock-prison study are not all that great, as buffers are penalties that deprive the victim of decision-power. Although, that is less severe and is in an open setting, instead of a prison, that is the same kind of penalty as a prison sentence. In addition the volunteers who participated in his study were college students and, thus, were the same class of people as enter government. A short quote from his 1982 paper goes a long ways towards explaining what he found: "The counterpart of the mastery and control [exhibited by the guards] was the depression and hopelessness witnessed in the prisoners." --- We have heard in public testimony or have personally experienced these types of behaviors among government employees, involved in land-use regulation. So, we should not fail to recognize that these phenomena are applicable in this County to land use regulation.

Nevertheless, all that these two studies really tell us, is that psychologists have studied the mechanisms by which repressive regulation and/or its unjust application can lead to the breakdown of law and government and the development of a widespread sentiment of belligerence and defiance or, worse yet, depression and lethargy, among the public.

When we consider the risks and costs associated with regulation, these risks should not be overlooked, for they quite possibly have a greater impact upon the quality and enjoyment of life even than the financial burden that regulation unavoidably imposes upon the public. In my opinion, it is highly unlikely that the doubtful gains that may be obtained by the environmental protections that are suggested in the majority and minority reports will be greater than these risks and costs.

14. At the first meetings of the Citizens' Advisory Committee, I suggested that we should take the opportunity to confirm and support the widely-held view among the public of Jefferson County, in favor of what might be called "sustainable-living." In particular, I suggested that any land use, including not only agriculture but also residential use and small businesses, should be exempt from the critical areas code regulations if the property owner followed a few simple and easily-understood rules that would provide reasonable assurance that no pollution or other environmental damage would occur.

Central among these rules was the requirement that no pesticides, herbicides, fertilizers, or other chemicals would be used in gardening or farming except those that were grown or originated on the parcel. There would have to be a few other rules, such as setbacks for compost heaps, driveways, and buildings, the provision of shade along water bodies and control of stormwater runoff. --- In fact, one could simply add such an exemption to the allowed uses of buffers in either the majority or minority reports. -- This would go a long ways towards making the critical areas ordinance livable for the vast majority of the public, by allowing them a way to escape government regulation, if they do no harm. It would also confirm and support a widely held ethic in this County and, quite possibly, might result in this County's becoming a World leader in sustainable living. Unfortunately, it soon became apparent that this proposal was inconsistent with the desires for featherbedding on the part of the various interest groups represented within the Citizen's Advisory Committee. They were all opposed to a non-regulatory approach, probably, because it did not provide them with the opportunities for funding, authority, or power that they desired. Thus, we appear to have missed an opportunity to take a significant step forwards.

15. The majority and minority reports appear to be two different interpretations of the Department of Ecology's recommendations: Specifically, option three in appendix 8C of Volume two of *Washington Wetlands*. These two reports differ mainly in details, one being more prescriptive (which is not entirely without merit, as the law is, then, fixed and known), whereas, the other allows more for creative solutions. It should be possible to combine many parts of these two reports into a single ordinance. Nevertheless, as most of my objections apply mostly to elements which are common to both of them, I can not endorse either of them nor is it likely that I would be able to endorse a combined version.

The only possible exception, would be if the outcome included a provision that would allow individuals to avoid regulation, if they followed a simple set of simple rules that will insure that they would do not harm. However, "no regulation" within that path really means no regulation and anything short of that defeats the purpose.

16. Finally, I object to the suppression of minority opinion: The Citizen's Advisory Committee voted to allow minority reports but the Planning Commission has instructed them, near the end of the process, that such reports can only be accepted from groups within the Advisory Committee, not from individuals.

Literature Cited

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