



JEFFERSON COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT

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Memorandum

To: Jefferson County Planning Commission
From: Staff
CC: Board of County Commissioners, County Administrator
Date: February 13, 2003
Re: Agricultural Lands designation and regulation

Introduction

This memorandum addresses the agricultural exemption portion of a UDC amendment proposal now before you and concludes with a revised staff recommendation. Also provided is background information about how agricultural lands have been designated and regulated in Jefferson County and what work remains unfinished.

Attachments

- Resolution No. 82-91: Open Space Tax Program, 1991
- Ordinance No. 08-0525-95: Interim Agricultural Lands Ordinance, 1995
- RCW 84.34.020 Definitions ("Farm and agricultural land," etc.)
- Agricultural exemptions from Uniform Building Code (UBC) for agricultural building or structure and temporary growing structures
- ESHB 2305 (effective when Ecology adopts a new rule for updating local Shoreline Master Programs)

MLA02-485

The March 26, 2002 settlement between the Washington Environmental Council (WEC) and Jefferson County included the provision (at 4.1) that,

Jefferson County staff will propose language to amend the Unified Development Code, which currently exempts all ongoing agricultural practices from the provisions of the UDC that relate to 'environmentally sensitive areas.' The proposed amendment will limit that exemption so it would only apply to lands of long-term agricultural significance. The amendment will not include or mandate a specific enforcement program. The amendment will be adopted within twelve (12) months of execution of this agreement.

The line-in/line-out language for MLA02-485 was prepared in September of last year to address this provision and other provisions of the settlement. The issue did not come before the Planning Commission at that time because of the need to finish the annual *Comprehensive Plan* amendment cycle.

Jefferson County Ag. Lands Policy

The following sections together present a description of the County's Agricultural Lands policy over the last dozen or so years.

Open Space Tax Program

The Jefferson County Open Space Tax Program was established via Resolution No. 82-91 on August 5, 1991, pursuant to the RCW 84.34, the Open Space Taxation Act. The Assessor processes applications for the farm and agricultural land open space classification. (Refer to Part II of the Open Space Tax Program attachment, page 8). The criteria for classification is contained in the Definitions section of the Act (RCW 84.34.020(2)).

The Assessor Land Use Code for parcels that participate in the Open Space Tax Program as Agricultural Land is 8100. Using this Code, it is possible to link the Assessor's database to the county parcel map. County Central Services provides the following figures, based on a database query conducted in February 2003. (Note: sometimes a "tax parcel" is actually more than one parcel consolidated under one tax parcel number for tax billing purposes.) There are currently 333 tax parcels of land, consisting of 6,077 acres, which are wholly or partially enrolled in the Tax Program as Ag Land. This includes land inside the City of Port Townsend limits. There are approximately 143 landowners with Ag Land enrolled in the Program. Of the total acres enrolled in the Tax Program as Ag Land, 4,052 acres are designated per the *Comprehensive Plan* Land Use Map as Agricultural Lands of Long-Term Commercial Significance (i.e., either zoned as Commercial Agriculture [AG-20], Local Agriculture [AG-5], or located in an Agriculture Production District [APD]).

That leaves about 2,026 acres enrolled in the Tax Program as Ag Land that are not "GMA Ag Lands" (i.e., lands designated per the Growth Management Act and the Jefferson County *Comprehensive Plan* as Agricultural Lands of Long-Term Commercial Significance.) Of those 2,026 acres, 1,939 acres, owned by a group of about 75 landowners, are located in the unincorporated area of Jefferson County (i.e., outside the boundaries of the City of Port Townsend). Only those areas outside of the City limits are regulated under the Jefferson County *Comprehensive Plan* and the Unified Development Code (UDC).

Some of the land enrolled in the Tax Program as Ag Land is located in the West End of Jefferson County, approximately seven tax parcels representing 165 acres. There is no GMA Ag Land (i.e., land designated AG-20, AG-5, or within an APD) in the West End.

Interim Agricultural Lands Ordinance

The attached Ordinance No. 08-0525-95, adopted on May 25, 1995, represents the County's pre-*Comprehensive Plan* effort to designate and conserve agricultural lands of long-term commercial significance as required by Chapter 36.70A RCW, the Growth Management Act. (See the timeline under Section 1.10 Findings for details on the events that led up to the adoption of the Interim Ag. Lands Ordinance.) The Ordinance designated Class I and II Agricultural Land and established a process by which landowners could petition for designation as Class III Agricultural Land, otherwise known as Agricultural Land of Local Significance. There were five criteria for such designation (Section 4.30) and a petition process that included review by a Hearing Examiner and a final decision by the BOCC (Section 6.30).

The Ordinance also included Development Regulations (Section 7.00) and Uses (8.00) on Agricultural Lands, including Agricultural Lands of Local Significance. The maximum residential density for Agricultural Lands of Local Significance was set at one dwelling unit per parcel or one dwelling unit per twenty (20) acres, whichever is the greater (Section 7.10.2).

Comprehensive Plan

Under Resolution No. 72-98, Jefferson County adopted the *Comprehensive Plan* on August 28, 1998. Most of the goals and policies relevant to Agricultural Lands are found in the Natural Resources Element, though there are examples of applicable goals and policies in other Elements (e.g., Land Use and Rural Element, LNG 24.0). The Agricultural Lands discussion begins on page 4-8. There are two classes of Agricultural Lands of Long-Term Commercial Significance (pages 4-8 and 4-9): (1) Lands lying within the designated "Agricultural Production Districts" and (2) Agricultural Lands of Local Significance, which are designated by the County through the voluntary action of the owner who successfully petitions to "opt-in" to the designation and receive its associated protections and benefits (discussed in the UDC section below).

The same five criteria from the Interim Agricultural Lands Ordinance are established in the *Comprehensive Plan* as the criteria for designating Agricultural Lands of Local Significance (page 4-9 and 4-10). There is also reference to the definition of agricultural land in the Interim Agricultural Lands Ordinance (criterion four). The map of Agricultural Lands of Long-Term Commercial Significance on page 4-27 of the *Comprehensive Plan* includes some areas that are designated as Agricultural Lands of Local Significance. (Statistics from Central Services: Four tax parcels, 86.25 acres). For reference ease, here are the criteria for Agricultural Lands of Local Significance:

- No part of the parcel lies within the boundaries of an Urban Growth Area Boundary;
- The parcel is a minimum of five (5) acres;
- The subject property is surrounded by parcels no smaller than three (3) acres in size on 100% of its perimeter;

- The parcel meets the definition of agricultural land provided by the Agricultural Land Ordinance; and,
- The parcel is currently used or managed for commercial agriculture purposes.

The definition of agricultural land provided in the (Interim) Agricultural Land Ordinance (1995, at page 6) is substantially identical with the definition of Agricultural Resource Lands in UDC Section 2 (at page 2-2, reprinted here):

Lands that are primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, livestock, or Christmas trees not subject to the excise tax imposed by RCW 84.33.100-.140, and have long-term commercial significance for agricultural production (RCW 36.70A.030(2)). Agricultural Resource Lands is also a land-use designation (AG) in the *Comprehensive Plan*.

Though the *Comprehensive Plan* categorizes agricultural land and sets policy for development regulations on agricultural lands, it is not the “permanent Agricultural Lands Ordinance” to replace or complete the Interim Agricultural Lands Ordinance. See discussion on page 4-10 under “The Regulatory Framework for Agriculture” and the following goals and policies and action items: NRP 10.1, NRP 10.4, Action Items A.9, A.10, A.12, A.13, B.8, B.9, B.10, B.11, and B.12. (Some of the policies and action items have been completely or partially implemented through adoption of the UDC. See the UDC section below.)

Unified Development Code (UDC)

Jefferson County adopted the Unified Development Code (UDC) on December 18, 2000, effective January 16, 2001, through Ordinance No. 12-1218-00. The UDC is the set of development regulations to implement the *Comprehensive Plan*, replacing disparate interim ordinances, including the Interim Agricultural Lands Ordinance. Some of the agricultural lands policies and action items in the *Comprehensive Plan* were completely or partially implemented through adoption of the UDC. See UDC Sections 3.1.3.a, 3.3.2, 3.3.3, 3.5.1, 3.5.2, 3.6.4.f(1)ii and iii, 3.6.9.c(1)v, 3.6.13, 4.33, 4.37, 4.38, Table 3-1: Allowable and Prohibited Uses, and Table 6-1: Density, Dimension and Open Space Standards. Among the policies and action items wholly or partially implemented by these UDC sections are NRP 10.2, NRP 10.6, NRP 10.8, and Action Item B.10.

Included in the UDC is language pertaining to a “Local Agriculture” land use district, labeled as AG-5, which presumably has some relation to the *Comprehensive Plan*’s Agricultural Lands of Local Significance. There is no land in an AG-5 district, however, on the Jefferson County *Comprehensive Plan* Land Use Map. Three of the four tax parcels that are depicted as Agricultural Lands of Local Significance on the Comprehensive Plan map (page 4-27) are zoned Commercial Agriculture (AG-20) on the Land Use Map and fall outside of the designated Agriculture Production Districts (APDs). (One parcel adjacent to Oak Bay that was depicted as a Agricultural Land of Local Significance is zoned RR 1:5 on the Land Use Map.) There are no other AG-

20 parcels that are outside of the APDs (with the exception of one small area adjacent to Hwy 101 near the head of Discovery Bay). Another confusing aspect about the AG-5 district in the UDC is that, according to the *Comprehensive Plan*, Agricultural Lands of Local Significance have a maximum density of one dwelling unit per 20 acres (1:20) or one dwelling unit per parcel, whichever is greater. The UDC itself at 3.5.2.a says the same about AG-5 lands. But UDC Table 6-1 lists the “Maximum Density (DU/Acre)” for AG-5 (Agriculture—Local) as 5, which is unclear or misleading, as is the label “AG-5” itself. The only regulatory difference between AG-20 and AG-5 in the UDC are the setbacks required for *adjacent development*, which are 75 feet and 35 feet, respectively. Agriculture—Commercial and Agriculture—Local share the same column in the use table (UDC Table 3-1).

So what type of protection does land designated as Agricultural Land of Long-Term Commercial Significance receive? The UDC, per policy of the *Comprehensive Plan*, has “Right to Farm” provisions for all Resource and Rural land use districts except RR 1:5 (UDC 3.3). The provisions include protections against nuisance claims and requirements for disclosure statements on permits issued for adjacent lands. The “Right to Farm” provisions are not unique to Agricultural Lands of Long-Term Commercial Significance. The unique attributes of those lands would be the specific use provisions in the use table (Table 3-1), the bulk and dimensional standards for Ag lands (Table 6-1), and the setbacks required for development on adjacent land (UDC 3.5). Also, Agricultural Lands of Long-Term Commercial Significance have a base density of 1:20. Owners of Ag lands are encouraged to use the clustering provisions of the Planned Rural Residential Development (PRRD) process for land division applications (3.6.2.c).

Note that the UDC contains a definition of Agricultural Land of Local Significance in Section 2:

Land in addition to designated Class I or Class II farmlands that is of local importance for the production of food, fiber, forage or oilseed crops. Generally, additional farmlands of local importance include those that are nearly prime farmland and that economically produce high yields of crops when treated or managed according to acceptable farming methods. Such farmland may also include areas of commercial aquaculture.

The definition includes reference to areas of commercial aquaculture. See the section below on aquaculture for discussion of its relationship with Agricultural Lands.

One of the principal items to be completed in order to establish the “Final” Agricultural Lands Ordinance is the establishment of agricultural BMPs. Under Section 4, Performance and Use-Specific Standards, Section 4.3 has been reserved for “Agricultural Activities, Best Management Practices for Water Quality.” As an example, here is what San Juan County has for this section of their UDC:

All agricultural activities performed within watersheds for ground water collection or adjacent to shorelines shall develop a water quality conservation plan with the local USDA representative consistent with “best management

practices” and with the goal of protecting water quality. Agricultural activities conducted on Agricultural Resource (AG) Lands will include the water quality plan as a portion of the five-year plan filed with the County Assessor.

By comparison, at the present time Jefferson County does not have a local United States Department of Agriculture (USDA) representative (a.k.a., Natural Resources Conservation Service—NRCS—representative). Two staff persons work out of an office in Port Orchard that serves Kitsap, Mason, Jefferson, and Clallam Counties. Two positions open in the Port Angeles office have not been filled at this time. The Jefferson County Conservation District estimates that at least one additional full-time position dedicated to “water quality conservation plan preparation” would be needed for implementation of the San Juan County model described above.

The UDC does reference BMP requirements for commercial agriculture with regard to Critical Aquifer Recharge Areas. UDC 3.6.5.d(5) reads:

Commercial agricultural activities, including landscaping operations must be operated in accordance with best management practices for fertilizer, pesticide, and animal waste management as developed by the Jefferson County Conservation District.

The Conservation District reports that BMPs must be selected and applied on a site-specific basis. NRCS has a Field Office Technical Guide that lists BMPs. Some innovative practices not covered by the NRCS Guide could be effective, also, according to the Conservation District.

With regard to the exemptions to the environmentally sensitive areas regulations for existing and ongoing agriculture (UDC 3.6.4.f(1)ii and iii, 3.6.9.c(1)v), which is one of the subjects of MLA02-485, the term “Agriculture, Existing and Ongoing” is defined in Section 2 of the UDC (page 2-2) in this way: “Any agricultural activity conducted on lands defined in RCW 84.34.020(2); agricultural use ceases when the area on which it is conducted is converted to a non-agricultural use.” In order to qualify for an exemption to the UDC environmentally sensitive areas regulations for existing and ongoing agriculture, the area in question must meet the definition of “Farm and agricultural land” in the Open Space Taxation Act. This is the same criteria used for reviewing land proposed for inclusion in the County’s Open Space Tax Program as Agricultural Land.

Therefore, all the land currently enrolled in the Ag part of the Tax Program qualifies for the UDC exemption. (The original UDC amendment proposed through MLA02-485 would change this by limiting the exemption to lands located within an APD.) There may be other land currently not enrolled in the Program that would qualify for the current UDC exemption (i.e., the land would meet the criteria for enrollment but has not been enrolled in the Program). The current UDC exemption is not a “blanket exemption,” as exempt land must meet the definitional criteria of “Farm and agricultural land” in the statute, meaning that it must be land used for commercial agriculture.

Stormwater Management Permit Exemption for Commercial Agriculture

UDC Section 6.7.2 reads, "Commercial agriculture...[is] exempt from the provisions of the minimum requirements." The 2001 Department of Ecology *Stormwater Management Manual for Western Washington*, Section 2.2 Exemptions, page 2-3, reads, "Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timberland to agriculture, and the construction of impervious surfaces are not exempt."

Other Agricultural Exemptions

As an important side note, it is worth mentioning that there are other "agricultural exemptions" besides the exemptions to the environmentally sensitive areas regulations for existing and ongoing agriculture. These other exemptions relate to meeting the requirements of the Uniform Building Code (UBC) for the construction of qualifying agricultural buildings, structures, or temporary growing structures. Attached are two information sheets that address these topics. The ordinance language providing the UBC exemption for agricultural structures is found in Ordinance No. 03-0713-98, which is contained in Appendix A of the UDC. See page 4, Section 5, #13. An exemption from meeting the UBC standards is unrelated to the UDC exemptions to the environmentally sensitive areas regulations for existing and ongoing agriculture. A UBC-exempt building is not exempt from Fish and Wildlife Habitat Area or Wetland buffers, for example.

Issues

The following are issues that remain unresolved or work that remains incomplete according to the *Comprehensive Plan* policy to establish the "Final" Agricultural Lands Ordinance.

Classification / Designation

There is no process in place at this time for a landowner to petition for designation of land as Agricultural Lands of Local Significance. If the only available process is applying for a *Comprehensive Plan* amendment during the annual amendment cycle, then Action Item A.12 (page 4-41 of the *Comprehensive Plan*) would not be fulfilled, as such a process would not be "Encouraging agricultural landowners to participate in the Agricultural Lands of Local Significance Program." On one hand, a change to the Land Use Map requires a *Comprehensive Plan* amendment. On the other hand, the Interim Agricultural Lands Ordinance had a process by which a "petition" was made to the Hearing Examiner, who forwarded a recommendation to the BOCC for final action. There is language in the *Comprehensive Plan* that respects the policies of the Interim Agricultural Lands Ordinance and that supports the establishment of a simpler process than an amendment to the Plan. However, the question remains how to develop a process that is compliant with the *Comprehensive Plan* and the GMA, while respecting the rights and meeting the needs of the county's working farmers. Refer to the Revised Recommendation below for one idea.

There is also a general confusion about the exact relationship between the following designations: Agricultural Lands of Long-Term Commercial Significance, Agriculture Production Districts, Agricultural Lands of Local Significance, Commercial Agriculture (AG-20), and Local Agriculture (AG-5). A related question involves the relationship between these land use designations and land that is enrolled in the Open Space Tax Program as Ag Land and land that would otherwise meet the definition of "Farm and agricultural land" at RCW 84.34.020(2). It should be noted that development of the Interim Agricultural Lands Ordinance took place in a compressed time frame and that there has been considerable staff turnover since adoption of the *Comprehensive Plan*. This, in part, explains apparent discrepancies or inconsistencies in policy and regulation in various documents.

Aquaculture Resources

The *Comprehensive Plan* addresses this topic beginning on page 4-10. Jefferson County made the unique policy decision to classify upland finfish hatcheries and commercial shellfish beds and their upland facilities as Agricultural Lands of Long-Term Commercial Significance. The *Plan* also describes the intention to establish designation procedures and regulations for aquaculture lands in the "Final" Agricultural Lands Ordinance and integrate policies and regulations with the SMP, as revised for consistency with the *Comprehensive Plan* (and now also with the new shoreline rule expected to be adopted by Ecology this year). See the discussion on page 4-10, the map on page 4-29, the Natural Resource Policies under NRG 11.0, and Action Items A.13, B.11 and B.12. In summary, a complete "Final" Agricultural Lands Ordinance should include consideration of aquaculture resources.

Shoreline Master Program update

Another aspect to consider is the relationship of the agricultural exemption issue to the Shoreline Management Act (SMA) and the local Shoreline Master Program (SMP). The 1989 Jefferson County SMP is likely to be updated in the next few years. Ideally, the County policy on Agricultural Lands should be completed before or during the SMP update process, so that the updated SMP properly reflects the County's overall Agricultural Lands policy.

Additionally, the SMA and the SMP contain statutory direction and local policy and regulation with regard to agricultural exemptions. Last year the Governor signed into law Engrossed Substitute House Bill (ESHB) 2305, which added a new section to the SMA (see attachment) stipulating that SMPs "...shall not require modification of or limit agricultural activities occurring on agricultural land" and adding other related provisions. ESHB 2305 also provides definitions for agricultural activities, agricultural products, agricultural equipment, and agricultural land and requires that updated SMPs be consistent with the definitions of the amended section of the SMA. The new section "...applies only to this chapter, and shall not affect any other authority of local government," presumably meaning that critical areas regulations under GMA are a separate, unaffected matter. There is discussion in this year's legislative session about legislative actions to more explicitly or clearly integrate SMA and GMA, including how those laws address the regulation of agriculture (e.g., SB 5353).

Two recent Hearings Board decisions have drawn the attention of local governments, State agencies, and the legislature: the Western Board's rejection of Skagit County's agricultural policies and regulations and the Central Puget Sound Board's overturning of the SMP adopted by the City of Everett and accepted by the Department of Ecology. What could be potentially awkward for Jefferson County would be to have two sets of regulations for agriculture: one set for agricultural activities within shorelands established per the SMA (i.e., generally within 200 feet of a jurisdictional shoreline—a Type 1 water—such as a stream with a mean annual flow of greater than 20 cubic feet per second) and another set for agricultural activities within stream buffers established per the GMA (which would overlap with shorelands in some cases and not in others). Our understanding has been that GMA critical area (i.e., environmentally sensitive area) regulations are supposed to be integrated with SMP development regulations with the 2004 GMA Update or the next SMP update, whichever comes first. One potential issue as yet to be resolved by the legislature is conflicting provisions in the SMA and the GMA regarding the regulation of agricultural activities in shorelands and overlapping environmentally sensitive areas.

The Jefferson County SMP currently in effect, adopted in 1989, has an exemption for agricultural activities (Section 3.402, page 25, number 9) in shorelands (basically, 200 feet from the edge of a marine water body or jurisdictional fresh water body):

Construction of a barn or similar agricultural structure on shorelands. Construction and practices normal or necessary for farming, irrigation, and ranching activities including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures, including but not limited to head gates, pumping facilities, and irrigation channels. However, a feedlot of any size, all processing plants, other activities of a commercial nature, and alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation shall not be considered normal for necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

To be “exempt” in the SMP means that the proposed development or activity is exempt from the need to acquire a shoreline substantial development permit. It does not mean that the proposal is exempt for the regulations in the SMP (Section 3.401, page 23). Per the UDC, a shoreline permit exemption is a Type I process (i.e., administrative with no public notice if the proposal is categorically exempt from review under the State Environmental Policy Act).¹

The 1989 SMP also has policies and performance standards for agriculture practiced in shorelands at Section 5.20 (page 43), including this performance standard (number 6 to implement policy number 3): “Buffer zones or permanent vegetation

¹ As a side note, under the Land Use Procedures Ordinance (LUPO) that was in place before the UDC, shoreline permit exemptions required public notice in the same fashion as substantial development permits (30-day public notice per the SMA).

shall be established and/or maintained between tilled or grazed areas and associated water bodies to retard surface runoff, reduce siltation, and promote valuable shade and habitat for fish or other wildlife.”

Environmentally Sensitive Areas (a.k.a., “Critical Areas”) exemption

The environmentally sensitive areas exemption is the driving subject of this memorandum and a key feature of the proposed UDC amendment before the Planning Commission as MLA02-485. Ideally, however this issue is resolved will honor the settlement with WEC, be supported by the agricultural community, result in effective protection for environmentally sensitive areas, and be consistent with State law and Jefferson County policies. How to accomplish all these objectives with one proposal is one of the challenges before DCD, the Planning Commission, the public, WEC, and the Board of Commissioners.

The agricultural exemption is also related to other unfinished Agricultural Lands work. For example, finalizing the classification and designation process for Agricultural Lands of Long-Term Commercial Significance and clearly relating planning policy and regulations to Ag Lands enrolled in the Open Space Tax Program are unfinished tasks that relate to the agricultural exemption issue. Additionally, water quality BMPs for agricultural activities and other riparian area active management strategies may be methods to increase the functionality of protection for streams and wetlands.

Other Washington state jurisdictions, such as Clallam County and Skagit County, have been working with this issue of balancing supportive policy and regulation for commercial agriculture, as well as water quality and wildlife habitat. So far, neither of these jurisdictions have developed a program that has been deemed GMA-compliant by the Western Washington Growth Management Hearings Board (WWGMHB). Clallam County has filed suit against the WWGMHB in Kitsap Superior Court. Skagit County has also had lengthy legal battles over their process and is expected to release another proposal shortly for addressing the critical areas agricultural exemption issue. Clallam and Skagit Counties were among a select group of four counties that received a pot of \$6 million from the State Legislature to work on agricultural issues with respect to GMA.

Correlation Between Open Space—Ag Land (that is not GMA Ag Land) and Wetlands, Streams, and their Buffers

Among the issues presented for discussion at the February 5 public hearing before the Planning Commission on MLA02-485 was how the environmentally sensitive areas exemption will or will not apply to particular categories of agricultural lands, particularly those enrolled in the Open Space Tax Program as Ag Lands that are not designated as GMA Ag Lands (i.e., not designated AG-20 or AG-5 or within an APD), since according to the proposal in the original MLA02-485 application, these lands would not qualify for the exemption. As stated previously, there are 1,939 acres that fall into this category in the unincorporated areas of Jefferson County. About 75 landowners own this land. Using the standard stream buffers (ranging from 50 to 150 feet) in the UDC (Table 3-2 on page 3-26) in conjunction with the stream type coverage provided by the State Department of Natural Resources (DNR) and the

largest standard wetland buffer of 150 feet (range of 25 to 150 feet is based on Wetland Category) in the UDC (Table 3-4 on page 3-32) in conjunction with the wetland coverage used by the County (which does not include Wetland Category), staff is able to correlate this information with the 1,939 acres referenced above and estimate the number of acres potentially affected by regulation. The following table illustrates the results. Keep in mind that these results are based on using the *largest* possible wetland buffer required. Wetland Categories II-IV have smaller standard buffers. Due to the fact that it is likely that there are a variety of Wetland Categories in these areas with a variety of standard buffers, including buffers as low as 25 feet, the number and percentage of affected acres is likely *smaller*.

Correlation Table: Open Space—Ag (not GMA Ag), Wetlands, Streams, and Buffers

| Database Query Category | Number of Acres | Percentage of Total |
|---|-----------------|---------------------|
| Open Space—Ag Land and not Designated GMA Ag Lands | 1,939 | 100% |
| ...and in Wetlands and/or 150-foot Buffers or Streams and/or Standard Buffers | 778 | 40% |
| ...and in Wetlands and/or 150-foot Buffers | 696 | 36% |
| ...and in Streams and/or Standard Buffers | 230 | 12% |

This data demonstrates, for example, that only 12% of the land that under the original MLA02-485 application would no longer qualify for the general environmentally sensitive areas exemption is affected by streams and their standard buffers.

Ag. Best Management Practices (BMPs)

UDC 4.3, Agricultural Activities, Best Management Practices for Water Quality, has been reserved for future completion. This could be an opportune time to complete the work. BMPs have been established by the Natural Resources Conservation Service (NRCS, formerly the Soil Conservation Service) and other entities involved in agriculture. (Visit the NRCS web site for the Washington State Field Office Technical Guide for more information: <http://www.wa.nrcs.usda.gov/FOTG/>.) Completing this UDC section may not be as time-consuming as one would expect (see the San Juan County example provided above) and may be considered an important element of Jefferson County’s overall Agricultural Lands policy and regulation. Reference could be made to the voluntary basin-by-basin planning process currently underway per the WEC Settlement Agreement for establishing agricultural BMPs and riparian management strategies for maintaining and improving habitat.

Revised Staff Recommendation

Staff recommends that the Planning Commission work with staff to address the non-agriculture elements of MLA02-485 (wetland mitigation ratios and State agency review procedures for Special Reports) in combination with the first step of a two-step process to complete Agricultural Lands planning in Jefferson County. Step One is an immediate resolution to the issue surrounding the environmentally sensitive areas exemption for existing and ongoing agriculture. The WEC Agreement timeline for adopting amendments pursuant to provision 4.1 is March 26, 2003. Step Two involves a more comprehensive approach through the annual *Comprehensive Plan* amendment process, potentially including changes to the Land Use Map and to the regulatory language in the UDC.

Step One: UDC Amendment Regarding Agricultural Exemption

Step One involves immediate amendments to the UDC. The result of these amendments would be that lands either designated as GMA Ag Lands or enrolled in the Open Space Tax Program as Ag Lands would be exempt from the standard UDC stream and wetland buffers. These recommendations replace the proposed amendatory language limiting agricultural exemptions in the original MLA02-485 proposal. Following are the staff-recommended UDC amendments:

1. Modification of the definition of "Agriculture, Existing and Ongoing" in Section 2 of the UDC so that only those lands actually enrolled in the Jefferson County Open Space Taxation Program as Agricultural Land or lands designated on the Land Use Map as Agricultural Lands of Long-Term Commercial Significance would meet the definition and therefore qualify for the environmentally sensitive areas exemption for existing and ongoing agriculture. At this time, lands that *could* qualify for the Open Space Taxation Program as Agricultural Land, at least per the definition of "Farm and agricultural land" in the Open Space Taxation Act, are included in the exemption. Amending the definition in the manner described above would limit the exemption to only those lands that are enrolled in the Program (i.e., have demonstrated a long-term commitment to commercial agriculture).

Agriculture, Existing and Ongoing

Any agricultural activity conducted on lands defined in RCW 84.34.020(2) enrolled in the Open Space Tax Program as Agricultural Land or designated as Agricultural Lands of Long-Term Commercial Significance on the *Comprehensive Plan* Land Use Map; agricultural use ceases when the area on which it is conducted is converted to a non-agricultural use.

2. Remove the General Exemption at 3.6.4.f(1)ii. Refine exemptions in 3.6.8 Fish and Wildlife Habitat Areas (specifically 3.6.8.d(3) and (6)) and 3.6.9 Wetlands (specifically 3.6.9.c(1)v). [Do not modify the General Exemption at 3.6.4.f(1)iii per the original MLA02-485 application.]

This approach is intended to clarify what environmentally sensitive areas regulations apply or do not apply to agricultural activities. The most relevant (and contentious) environmentally sensitive areas are stream buffers (3.6.8 Fish and Wildlife Habitat Areas) and Wetlands (3.6.9). Exemptions from other sections may not be appropriate or applicable. For example, it may be inappropriate or irrelevant to apply exemptions to existing and ongoing agriculture for Critical Aquifer Recharge Areas (3.6.5) and Geologically Hazardous Areas (3.6.7), plus there is existing language regarding BMPs for agricultural activities in Critical Aquifer Recharge Areas (3.6.5.d(5)). With regard to Frequently Flooded Areas (3.6.6), the referenced 1995 Flood Damage Prevention Ordinance (No. 1-89), agriculture is listed as a preferred use in section 6.40, so there is no reason to either exempt or not exempt existing and ongoing agriculture from UDC 3.6.6.

UDC 3.6.8 Fish and Wildlife Habitat Areas, d. Exempt Activities.

(3) ~~Ongoing and existing~~ Existing and ongoing landscaping activities (such as lawn and garden maintenance) and existing and ongoing agricultural activities on lands enrolled in the Open Space Tax Program as Agricultural Land or on lands designated as Agricultural Lands of Long-Term Commercial Significance on the *Comprehensive Plan* Land Use Map. For the purpose of this section, existing and ongoing means that the activity has been conducted within the five-year period leading up to the adoption of Ordinance No. _____ on _____, 2003.

(6) Harvesting wild crops which do not significantly affect the viability of the wild crop, the function of the Fish and Wildlife Habitat Area or regulated buffer (does not include tilling of soil or alteration of the Fish and Wildlife Habitat Area, except as provided in (3), above).

UDC 3.6.9 Wetlands, c. Exempt Activities.

v. Existing and ongoing agricultural activities on lands enrolled in the Open Space Tax Program as Agricultural Land or on lands designated as Agricultural Lands of Long-Term Commercial Significance on the *Comprehensive Plan* Land Use Map. For the purpose of this section, existing and ongoing means that the activity has been conducted within the five-year period leading up to the adoption of Ordinance No. _____ on _____, 2003.

The result of these amendments would be that all lands either designated as GMA Ag Lands or enrolled in the Open Space Tax Program as Ag Lands would be exempt from the standard UDC stream and wetland buffers. Fish and Wildlife Habitat Area and Wetland protection would be accomplished through the basin-by-basin riparian management planning process being implemented pursuant to the WEC Agreement. Per provision 4.1 of the Agreement, the existing agricultural exemption would be limited in two ways: to only the Fish and Wildlife Habitat Areas and Wetlands sections of the UDC and to only lands that have been committed to commercial agriculture for the long-term, either through the Open Space Tax Program, a GMA Ag Lands designation, or both.

Step Two: Comprehensive Agricultural Lands Policy and Regulation

Staff also recommends that the Planning Commission work with staff to craft a *Comprehensive Plan* amendment and UDC amendment package for submittal into this year's *Comprehensive Plan* amendment cycle that addresses in a comprehensive manner the following issues:

- Clarification of various Agricultural Lands designations, as defined and regulated in the UDC
- Designation / petition process for Agricultural Lands of Local Significance, including Aquaculture Resources (may involve an outreach program to generate agricultural landowner interest in "opting in" to the Agricultural Lands of Local Significance program)
- Clarification of UDC regulations as applied to Ag land use districts and reconsideration of allowed and conditional uses per the use table (Table 3-1) (e.g., allow the potential for "farm camps" as schools operating on agricultural lands)
- Completion of UDC Section 4.3 on agricultural BMPs, including BMPs for aquaculture
- Other unfinished *Comprehensive Plan* policies and action items, as necessary and possible

One of the objectives of reviewing a comprehensive proposal as part of this year's amendment cycle would be to provide an opportunity for those landowners that operate commercial farms outside of designated Agricultural Lands of Long-Term Commercial Significance (i.e., GMA Ag Lands) to "opt-in" for GMA Ag Lands designation (through a County-suggested amendment process). One of the messages heard at the Planning Commission public hearing on February 5 was that some commercial farmers would prefer that their land be designated as agricultural resource land on the Land Use Map.

Staff believes that with a concerted effort, the County can resolve these issues and establish the "Final" Agricultural Lands Ordinance through amendments to the UDC and a re-invigoration of the Agricultural Lands of Local Significance program, potentially resulting in the addition of Agricultural Lands of Long-Term Commercial Significance to the Land Use Map. A "Final" Agriculture Lands Ordinance and updated Land Use Map will also benefit the upcoming SMP update process.

[END]