

# Regulatory Task Force Meeting Notes

July 30, 2019 WID Conference Room, Carnation

**Attendees:** Angela Donaldson (Fall City), Daryl Williams (Tulalip Tribes), Erin Ericson (WID), Joshua Monaghan, (KCD), Matthew Baerwalde (Snoqualmie tribe), Robert Voss, Meredith Mollie, (Ag Commission), Elissa Ostergaard (Snoqualmie Forum), Richard Martin, Eric Beach, Lou Beck, Josh Kubo, Joan Lee, Katy Vanderpool, Mitch Paine, Michael Murphy (WLRD),

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**Agenda item:** FEMA audit of King County Flood Hazard Regulations

**Presentation:** Mitch Paine (River and Flood Plain Management Section) spoke on the ongoing FEMA audit.

King County is a participant in the floodplain management program which is administered by FEMA. Started conversations with FEMA in 2017, field visit in 2018, in-office visit in 2019, letter with items needed to be addressed received spring 2019. FEMA looks through KC Code, i.e. Title 21A 24 230-272, to make sure it is compliant with Federal regs and the WAC. Changes include both editorial and material changes. RMFS/Permitting Division is working on code revisions, currently WLRD and DLS-PD leadership are reviewing drafts. No public comment yet. The King County objective is to make sure code is in compliance with minimum standards.

## NEW SECTIONS:

1. **Buildings:** Two types of buildings in flood code: residential and non-residential (wide ranging – sheds, churches, farm structures, offices, etc.) can be awkward and limiting for communities. So FEMA allows creation of 2 classes of buildings. This results in standards for residential, non-residential, agricultural-accessory buildings, residential-accessory (sheds, detached garages <400 ft<sup>2</sup>). Accessory categories are important b/c generally all buildings have to be elevated + dry proofed to base flood + free board. Accessory buildings don't have to have the elevation piece as long as they have flood vents and other safety elements in place. Already in the code but clarifying that section and making it stand out more.
2. **Water wells:** Prohibits new wells in the FEMA floodway. This change brings KC Code into alignment with WAC. Not clear how replacement wells or exempt wells fit under this change.

## CHANGES TO EXISTING LANGUAGE,

**Floodplain development:** This may seem like a big change but isn't. Current definition includes exemptions that are not appropriate. Some are still OK to be exempt, but FEMA doesn't want in code. Permitting staff to determine exemptions individually i.e. does it meet the definition of "development" or can it qualify as maintenance.

**King County Roads:** Clarifying which activities require floodplain permits

**Flood protection facilities:** Don't have to permit maintenance, but significant replacement will need permitting, flood hazard cert, etc.

**Variances** The code will create a variance clause intentionally absent from KC flood code, which since it is about protecting people and safety. FEMA states that this position isn't very defensible code without some variance language. Realistically variances are hard to get, but it needs to be there as a "relief valve". The proposed language is adopted from other communities enrolled in the NFIP

**Compensatory storage.** Previously if zero rise was met when building a farm pad it was ok to lose comp. storage. This is not the case not any more. Losing comp storage is not compliant with the National Marine Fisheries Service (NMFS) Biological Opinion that was written as a result of lawsuits against FEMA that found the minimum community standard impacted T&E species. As a result FEMA must require compensatory storage for anything lost in the floodplain with no variances. This change will definitely impact the farm pad program. RFMS is looking into creating a comp. storage bank.

**Discussion:** Katy and Mitch took questions on the changes and FEMA process:

Q. If you're taking the exemption out of code, how do people know the exemption exists?

A. Anyone doing floodplain work should be calling permitting to ask if they need a permit.

Q. What about FFARs?

A. No clear answer NOTE: We need to figure this one out

Q. (Josh M.) We explored compensatory storage in 2010 when the farm pad program was started, did not find functional places for banks and there was nothing meaningful found in the Snoqualmie Valley. This is a really big deal in terms of the FFF recommendations. Is there another mechanism? Is there a variance? Alternate pathways? Creates a real impediment to the future of farming in the Snoqualmie Valley.

A. We don't really have a choice.

Q. How are other counties dealing with this? It is a huge block for farms going forward to not be able to put things out of the floodplain (also a safety issue to be able to do that).

A. looked at other county codes and not finding any exemptions from compensatory storage. Pierce – tiny exemption is a house with a sub-grade crawl space, you can fill that in and not be required to show CS.

Q. What if KC doesn't adopt the FEMA recommendations?

A. We can't be a participating community in FIP –flood insurance, federally backed mortgages, some disaster relief.

Q. What about related to tree plantings? I don't know. It really depends on what the development is.

A. levy setback has to meet CS requirements. Does not include trees.

Q. Why can't you hold water up higher in the basin as comp storage.

A. factors into different elevations in the floodplain, needs to be within flood elevation bands. E.g. if you're putting in fill in the 50-100 year band, have to compensate within the same band. 0-10, 10-50, 50-100.... It used to be within the same foot of elevations and hydraulically linked. But now typically wider.

Q. Can we get maps showing this?

A. Good question b/c if we're looking at a causeway study and other life-protecting structures, we need that information.

Q. Does a capital project create comp storage? Carlson project did that to allow for a farm pad.

A. in the idea of comp storage bank, that concept would be available. Would require a big programmatic effort to do it.

Q. Is any project is development?

A. Yes, but not the tree planting portion. Clearing, root wad removal, etc. About tracking how much are you filling the bathtub and/or impacting flow.

Q. But why doesn't planting count towards CS?

A. Don't know.

Q. Have heard of tree plantings where FEMA did not allow tree plantings. But then some studies show there is downstream improvements in storage from plantings etc.

Q. As projects go in and land is eroded, is that CS?

A. Not as a rule. As lands change, communities/individuals can submit a letter of map revision demonstrating that change.

Q. Is there opportunity to engage with NMFS around some of the conversations around agricultural needs?

A. NMFS has delegated the authority to FEMA so it might be their habitat/bio specialist (Erin Cooper, R10). She was involved in the review of our code. Katie: but it is OK to talk to NMFS too. Recognizing this is a step backward and flood wants to be part of the collaborative process as much as possible.

Q. What is the timeline for code changes?

A. Uncertain. After some additional internal review, it will go out for public comment for 30 days, response, edits, etc. Then Executives office for submittal to council. Also FEMA and Ecology for review. Deadline – May 2020 for code update. Must be updates by the time the new FEMA maps come up (currently scheduled for May 2020)

Q. What about replacement wells?

A. WAC is pretty silent about that and it is unclear.

Q. If FFF were to provide input, where and when would be most effective?

A. Katy: Take it to Murph and Josh as Division leadership as well as Jim Chan at permitting.

Joan: The RTF group can go to IOC with letters they want to submit.

Q. Is there a matrix or errata sheet?

A. Currently a draft ordinance.

Q. Would like to be able to see the changes side by side with current code.

A. Don't have that yet but will ultimately.

Q. To be an accessory to Ag does the underlying parcel have to be zoned A

A. That would be a question for permitting.

Q. Will Ag remain exempt?

A. There is likely no fill or grading – in particular to the farm area or field roads.

Q. What about replacement wells?

A. WAC is silent about that and it is unclear.

**Conclusion:** Flood Code is portrayed as being intractable and we don't have an opportunity to influence it. Seems like that is not a place we're going to change the code, but instead begin working on creative projects to problem solve around solutions that can benefit all 3 within the code. Could compete for Floodplain by Design or New Park Levy funding sources. It's possible there is more Compensatory Storage than identified 10 years ago, and there may be some opportunities there. But unlikely to meet the needs for farms over the next 10 years. Need to better describe the context of the impact of farms here.

**EB note:** This is our introduction to this issue. I would ask us to digest this and at our next meeting (September 10) we'll outline what we want to do with it.

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#### **Agenda item:** Offsite Mitigation/Basin Planning

**Presentation:** Erin Erickson (WID) Sub-basin planning can provide a *net ecosystem benefit*<sup>1</sup> via basin-scale watershed planning and restoration. Worked with a NHC and subdivided the entire WID into a series of catchments with a single outfall to the main stem Snoqualmie river i.e. *sub-basins*. A *wetness* analysis was used to rank sub-basins based on drainage concerns to create the WID work plan.

Planning at a drainage basin scale:

- Allows one to see how projects work together.
- Identifies priority areas and Cost Share needs ahead of time
- Balance mitigation with impacts and identify mitigation areas (conservation opportunities) that would provide optimal ecosystem lift within a basin

The WID has not drafted a basin plan for these but such a plan would include: a. Documenting existing conditions, b. Project Plans, c. identify BMPs and d. Conservation Opportunities.

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<sup>1</sup> **EB note:** In developing the sub-basin planning approach avoid terminology that refers to other environmental programs e.g. Net Environmental Benefit Analysis

[https://www.epa.gov/~media/Files/EHS/Clean\\_Water/Oil\\_Spill\\_Prevention/NEBA/NEBA-Net-Environmental-Benefit-Analysis-July-2013.pdf](https://www.epa.gov/~media/Files/EHS/Clean_Water/Oil_Spill_Prevention/NEBA/NEBA-Net-Environmental-Benefit-Analysis-July-2013.pdf)

Examples of sub-basins that would be the initial focus of the approach are:

Langalois/Indian Creek, Basin 56, #1 priority

1. ADAP 2019 projects (4,000 linear ft.)
2. Replace culvert under SnoValley Trail. Fish passage Barrier Removal Board design funded/construction not committed to – hopefully KC (planned 2021)
3. Replace 3 private culverts ideally with bridges; NRCS-EQUIP \$ (planned 2021)
4. Maintain 1,500 linear feet watercourse; planned 2020, KC Flood Control District (KCFCD) funding, ADAP project

Tuck Creek, Basin 9, #2 priority

1. ADAP 2019, 2100 linear feet (dry channel)
2. Tuck Creek conceptual design work in process; KCFCD funded
  - i. including a relic poplar farm that WID wants to make farmable
  - ii. Tuck Creek gate/fish ladder (KC Roads Property)
3. Tuck Creek gate/fish ladder planning (KC Roads property)

Pearson's Eddy, Basin 1, #3 priority

1. 1936 drainage pump replacement (KCFCD \$)
2. 2 planned culvert replacements (KCFCD \$)
3. ADAP/KCD 3,500' of ditch maintenance  
Big ditch that gets a lot of water in the late spring and early fall, but almost no flow during the growing season. Below the threshold of being able to do fish assessment b/c DO is so low. Primarily due to RCG in channel. Thus not salmon habitat in this channel and little resource impact

Asked WDFW for exception to avoid planting along channel b/c it was already forested on one side. Asking for funding from FCD to understand environmental impacts on a portion of properties in the basin. Some beaver impacts, stumps buried on the property, FPP property. Project hurdles: a. Concerns about flooding and beavers, b. WDFW-ADAP agreement did not allow for the project to move forward<sup>2</sup>

Assumptions

- ADAP doesn't credit fish passage. planting off site within parcel or adjacent parcel
- Cleaning of ditch of noxious weeds really have a negative environmental impact? In some cases it improves the DO and may actually improve habitat.
- The objectives are shared but it isn't as high on the KC priority list as is was for the WID
- Sub-basin plans could be permitted by WDFW via HPA provided the management plan provides *No Net Loss*<sup>3</sup> and thus comply with the Shorelines Master Program.

Remains to be seen what an offsite mitigation approach might look like and what that provides us in terms of flexibility.

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<sup>2</sup> *EB note:* The WID presumption was that WDFW would not require on-site plantings based on resource conditions. The King County-WDFW Streamlined ADAP agreement specifically calls for plantings proximate to the waterway being maintained

<sup>3</sup> *EB note:* The statement that *no net loss* is the Hydraulic Code criterion for permit issuance is based on a single, isolated phrase in WAC 220-660 and does not accurately reflect the stated **Purpose** of an HPA which is to *protect fish life* (WAC 220-660-010). The term *no net loss* refers to the US government's overall policy goal regarding wetlands preservation (The Final Report of the National Wetlands Policy Forum, 1989). Similarly the Shorelines Master Program (SMP) established the standard of "*no net loss*" of shoreline ecological functions <https://fortress.wa.gov/ecy/publications/parts/1106010part4.pdf>

These ambiguities should be cleared up with WDFW Region 4 before going too much further down the Sub basin Planning path.

## Discussion:

Q. Do you know bottom line costs?

A. No.

Q. Flood planning on a corridor process rather than sub basins. Have you looked at synergies there?

Q. Can we do a crosswalk to identify opportunities in both of these planning approaches?

Q. So was ADAP a roadblock to drainage instead of facilitating it?

A. That is an over simplification. It works in some cases but not necessarily for offsite.

Q. Why the plantings?

A. The impacts of the loss of instream habitat provided by invasive and noxious vegetation in the channels. This will be compensated for by planting native plants along both sides of the waterway.

Q. Is Flood, Fish, Farm the right place for this conversation or does the WID engage in this conversation outside of this group? WID didn't exist when FFF was being crafted. And there is a lot of benefit to having the WID staff on the landscape.

A. There are examples of how this works, Skagit County has had one for a while – a multi-stakeholder approach. WDFW is a signatory on that agreement. Did hear WDFW invests in highest quality projects. NMFS would extend a safe harbor agreement for incidental take coverage. One part of what is needed is conservation work which sub basin planning fits neatly. The RTF role is not redundant with the WID. The RTF can provide a recommendation to the IOC to allow permitting authority to be WDFW and DLS-PD relinquishes jurisdiction in these cases.

Q. Is it fair to say you all have a sense that restoration efforts are being squandered where they would have a bigger impact elsewhere? Could be better coordinated and leveraged?

A. It's the focus on *No net loss* – we have to do more than that to get to salmon recovery. What we are looking for is *Net Ecosystem Benefit*. *No net loss* is the baseline and that is why the focus is restoration not just mitigation.

**Follow Up:** This topic is on the September 10 agenda for discussion as a recommendation to the IOC

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## Agenda item: Farm 2: Making Drainage Cheaper & Easier

**Presentation:** Josh Monaghan (KCD) Making Drainage Easier and Cheaper

- Farmers want expanded drainage. How do we know if we're making progress towards our goals?
- How can we make an evaluation of impact of drainage work on fish and other environmental parameters?
- Mitigation Flexibility; are there other ways we can think about mitigation – not every farmer wants to plant, how are we doing making space for other mitigation?

**Discussion:** Every element of drainage work is getting more expensive. Understand if we are getting any savings. Is the net process clearer and easier? Is the net process less expensive? Ag caucus needs to clearly understand the actual cost of drainage. *EB note*-WID, WLRD and KCD are compiling these

Cost to mitigation for drainage include direct costs i.e. the construction costs, and indirect costs i.e. the loss of crop productivity (shade, loss of H<sub>2</sub>O), and there is a public cost as well (*EB note*- please expand on this statement).

There is also a concern (*EB note*-by whom?) that if don't get the costs down overall, including the public cost, then something could change in the public's willingness to cover those and funding could go away. It needs to get reduced overall.

Hearing about the farm pads makes us feel like we're not making progress as a whole, only in a narrow band, a single project at a time. Basin-wide approach holds more promise than individual projects right now.

Food security (*EB note*- define concisely) needs to be discussed and highlighted more thoroughly, more clearly. And it shifts out of the region or country due to costs. That is the piece that has to be shared on the political side.

Discussion about ideas that a member of Ag caucus thinks would be good, but doesn't know how fish and flood folks would respond. Is there an opportunity for a more casual conversation\*? Interest in trying to do some project work this season to begin testing ideas, collecting information.

**Follow Up:** WLRD, KCD and WID staff met on August 27 to discuss drainage costs and the respective allocation to partners. King County covers the cost of Permitting, Engineering, Cultural Resource review and post-project Planting, KCD administers grant funding that covers the operational (contractor) costs. The WID provides landowner outreach.

\*Bob Vos, a member of the Ag caucus, facilitated a "breakfast meeting" with interested members of the RTF on August 8th to discuss some of his ideas on drainage. Contact Bob for more information.  
*EB note*-This meeting is not affiliated with the work of the RTF

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**Agenda item:** Process Check

Recommendation Package for IOC at October meeting  
On-Site Mitigation Findings IOC transmittal  
Review Schedule and RTF Scope of Work

**Discussion:** *Recommendation Package to IOC for October meeting*

Q. Can we present the sub-basin planning for commitment to IOC?

A. Yes, WID will put a presentation together

Formally request funding for 2-D modeling, identify other stakeholders who would benefit from better modeling. Let's talk about some of the non-fill options identified in 1.0. Be ready for public comment period. Try to work with FEMA and NMFS, but really need to get creative and identify how to move forward under the rules as they will be changed. Need to understand the science behind the calculations.

*On-site Mitigation Findings IOC transmittal*, Review transmittal document and give approval at September meeting

*Review Schedule and RTF Scope of Work*

Q. Cultural resources – are there opportunities for cost savings, exemption for certain activities, etc. KCD has an exemption for plantings.

A. Keep it on the list.

Q. It seems things get more difficult as you move from County-State-Fed issue. Also as you move from inter-agency > code legislation. Can we influence Cultural Resource requirements?

A. Changing Cultural Resource would be an administrative action.

**Follow Up:** Eric will bring recommendations to the IOC related to on-site mitigation  
There will be an update on KC Beaver work at the next meeting

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