

Tuesday, April 07, 2009

To: Whatcom County Council
Pete Kremen, Whatcom County Executive

From: Charles Antholt, Chair, Agriculture Advisory Committee (AAC)

Subject: Agricultural Land Preservation Tools

The AAC finalized its review of the "tools" identified by the Technical Review Committee (TRC) for preserving farm land. The Agriculture Advisory Committee's findings with respect to each tool are provided below.

First, however, the AAC wants to note that the survey Whatcom Farm Friends carried out parallel to the TRC's work found that 92 percent of the farmers and 94 percent of non-farm residents (urban and rural) see encroachment as a major threat to keeping farm land in farming. This underlines the importance of the "tools" identified as well as suggests widespread community support for intervention that effectively mitigates encroachment onto farmlands. In that context, the AAC recommends it is timely for the county to move ahead in providing "additional protection" to the areas identified in the Rural Lands Area Study. Secondly, there are no silver bullets in dealing with the preservation of farm lands. The tools identified below, collectively can broaden the means to mitigate some of challenges facing keeping farm land farming, but not all. Lastly, the AAC stands ready to assist in further development, modernization and refinement of the tools identified below.

Agricultural Advisory Committee findings with respect to the Technical Review Committee's identified "Preservation Tools."

Recommended Tools

1. Purchase of Development Rights (PDR)

This option for protection of agricultural land was supported unanimously by the committee.

Comments:

This tool represents an ongoing program in Whatcom County. It is expensive and slow, however. There are seven proposed projects this year. This is a "drop in the bucket" in the context of roughly 4000 Development Rights (DRs) in the Ag Zone and Rural Lands Study areas. On the positive side, the program does establish what the market is for development rights and it is effective in permanently removing development potential off of farm land.

2. Lease of Development Rights

This option for protection of agricultural land was supported unanimously by the committee.

Comments:

This is a tool that could be used to hold development potential from being developed on an interim basis until the development rights could be purchased by a public entity or a land trust. This would be a specialized tool that would be used infrequently, but most probably when settling an estate where the beneficiaries are uncertain as to what to do with the land. In short it would broaden beneficiaries' options and mitigate against immediate selling of land for development purposes.

3. Transfer of Development Rights (TDR)

This option for protection of agricultural land was supported unanimously by the committee.

Comments:

Lacking an effective market mechanism there is very little possibility of a TDR program working in Whatcom County any time soon. Furthermore, there seems little opportunity for such a market mechanism to be developed. (See Planning and Development Services' White Paper and the city of Bellingham's paper on a TDR and PDR program). Nevertheless the AAC sees pursuing a TDR program so that as circumstances change an additional, market driven tool will be available to protect farmland. The TDR concept is particularly appealing in concept because of the use of market forces and the relatively low cost to taxpayers. In that context the AAC believes Whatcom County needs to move ahead with developing plans and policies that will result in a viable TDR program. Doing so, however, will require considerable, sustained use of staff resources and clear direction from county leadership. The AAC is committed to assist as necessary.

4. Parcel Reconfiguration

This option for protection of agricultural land was supported unanimously by the committee.

Comments:

The purpose of reconfiguring parcels is to place the existing development potential in areas that are the least valuable as farm land. This might also be accomplished between multiple parcels

5. Natural Resource Banking

This option for protection of agricultural land was supported by the committee. The vote was not unanimous.

Comments:

This conceptual tool links land and water resources and still has a long way to go in terms of operational details. Implementation would require cooperation between various levels of government and jurisdictions; hence would be anything but easy in full development of this tool. Sparking development of this tool were comments by a number of farmers that they would be willing trade off their ability to develop their land to obtain legal rights to water. At the moment, a sub-committee of Whatcom Farm Friends is fleshing out the underlying issues associated with development of this tool. The committee supports the further development of this tool and looks forward to seeing the details of such a program.

6. Right to Farm

This option for protection of agricultural land was supported unanimously by the committee.

Comment:

The Right-to-Farm ordinance has been useful in protecting farmers from nuisance law suits as they carry out their operations using acceptable farming practices. This seems particularly important given the existing potential for about 4000 more build outs in the Ag zone and Rural Lands Study area. Even so, there are people who do not understand agriculture and can cause difficulties due to that lack of understanding. The AAC recommends the right-to-farm ordinance should be reviewed to see if it is possible to make it more effective at the farm level. Another area of discussion revolved around the point that if people sue farmers and lose, the right-to-farm ordinance should include having the person who sued pay the legal fees incurred by the farmer. Lastly it was felt that anonymous complaints should not be given the same consideration as complainants who are willing to give their names.

7. Conservation Easements

This option for protection of agricultural land was supported unanimously by the committee.

Comment:

Conservation easements, when put into place, go with the land. They are used as a part of the county's Purchase of Development Rights program and are also used in Transfer of Development Rights programs. A conservation easement restricts the use of land to specified conservation purposes, such as conservation of agricultural land. Conservation easement agreements are also used between landowners and land trusts. The federal law recognizes donations of development rights under certain conditions as donations for tax purposes. The federal income tax conditions for the donation of conservation easements for agriculture lands are very favorable through 2009. We do not know if this will be extended or not. Nevertheless, even without the federal extension of current tax conditions it could be of interest to some owners of DRs within the agricultural areas of concern. The local Land Trust is working with landowners in Whatcom County to help them take advantage of this opportunity.

8. Clustering

This option for protection of agricultural land was supported unanimously by the committee.

Comment:

Clustering is currently required in the Agricultural Protection Overlay (APO) zone for parcels greater than 20 acres. The intent of clustering in the APO zone (and on other farm land) is to place development into the areas of a parcel that are the least productive or useful as farmland. The clustering tool is a compromise measure that allows development, but also protects a portion of the farmland at the same time. Considerations for agriculture should be the driver in clustering in the Agricultural Protective Overlay zone, not residential or Critical Areas Ordinance considerations. There is widespread belief that this tool is badly broken and needs repair. A lack of maximum setbacks, consideration of critical areas as trumping agricultural concerns, larger losses of land to developed parcels than are needed or wanted due to regulatory requirements, and limitations on the agricultural use of remainder parcels create conditions that are detrimental to long-term agricultural productivity and keeping farm land in farming.

9. Tax Abatement as Payment for Retiring Development Rights

This option came up during the discussion and was supported unanimously by the committee.

Comment:

Tax relief could be used as an alternative form of payment for the Purchase of Development Rights program. If land is permanently restricted from development, the cost to provide future services for those developments is greatly reduced. With this reasoning, the committee suggests that the county council explore the option of providing perpetual 100% tax abatement on property and improvements - in lieu of direct monetary payment from the county - for the Purchase of Development Rights.

Tools not Recommended

1. Down Zoning

This option was not endorsed by the committee. The vote to reject this option was not unanimous.

Comments:

The committee's recommendation to reject down zoning as a tool to protect farmland is related to property rights concerns and the need for acceptable levels of collateral for obtaining credit. There is considerable value in having the ability to sell property for development, for example, by dairy farmers to get through the current down turn in milk prices, or to continue current credit arrangements with lenders. On the other hand, if down zoning paid the landowner for the value lost, in the committee's view that would be an acceptable way to protect farmland.

An alternative view expressed was that farmland is too precious a resource to lose and should not be treated as a commodity based on its market or speculative value and that there was a higher value to society writ large in keeping farmland in farming.

2. Acquisition and Leaseback or Resale

This option to protect farmland was not endorsed by the committee. The vote was unanimous.

Comments:

Although some value was seen in having this option, it was perceived to be a tool already in place and used between, for example, a land owner and a land trust (as it is currently used) without direct involvement by the county. The ownership of the land by the county for this purpose was not perceived as a positive thing.