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POLICY NOTES

King County's Critical Areas Package:

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A Heavy-Handed Approach to Growth Management

By Russ Brooks and William R. Maurer

In March 2004, King County Executive Ron Sims proposed a series of new ordinances that, if enacted, would become some of the most restrictive regulations on the use of private property in the United States. Loosely referred to as the Critical Areas Package (CAP), these proposals have already received nationwide attention and have become the subject of heated controversy between rural landowners on one hand and county government and environmentalists on the other.

The CAP arises out of Washington's Growth Management Act (GMA). Under the GMA, the state develops growth standards and local governments develop growth plans, called "comprehensive plans," based on those standards. The GMA requires local governments to periodically update their comprehensive plans and critical area ordinances (or CAOs) to reflect the "best available science." King County must complete its review of the best available science and make any necessary code changes by December 2004.

New Rural Development Restrictions

As part of this process, Executive Sims submitted the CAP, which proposes changes to county ordinances intended to protect critical areas, stormwater and clearing and grading. Although the proposal is complex, three aspects stand out. Specifically, the CAP contains the following requirements for parcels that are zoned rural residential:

1) Landowners are limited to clearing only 35 percent of a parcel. The county would force the landowner to keep the remaining 65 percent as "forest or vegetation cover."

2) The county forces landowners to limit the amount of impacting impervious surfaces – roofs, driveways, etc. – to 10 percent of parcels larger than 2.5 acres. For lots smaller than 2.5 acres, impervious surface restrictions may be larger to account for access and utilities.

3) Buffers – areas where no development can occur – around certain wetlands would be increased to 300 feet, roughly the height of a 25-story building.

The CAP would apply to new development activities, such as new construction, additions or remodels to existing structures and other proposed changes to land use. Where no change of use is proposed, and where more than 35 percent of a parcel has already been legally cleared, the existing cleared area becomes the clearing limit.

Landowners would be restricted to the following uses on the portion of their property kept in forest cover: clearing for utilities easements and trails, removal of hazard trees, and limited vegetation removal to enhance tree growth. Each of these activities, however, would require a county-issued permit. Under the proposed changes to clearing and grading ordinances, activity requiring a permit would trigger application of the clearing limits.

The 65-10 Rule

The practical impact of the CAP is striking. For landowners wishing to build a house, the county would effectively bar most uses on 65 percent of their property in order to create a county-regulated nature preserve on their property. Nine-tenths of the property would have to be free of impervious surfaces, meaning that a house with

a roof could not occupy more than 10 percent of the property (and would occupy less if the homeowner wished to add a driveway). The presence of certain kinds of wetlands on a parcel could foreclose most, if not all, use of that parcel. The landowner would still hold title to, and *pay taxes* on, the portion of the property impacted by the CAP, but their ability to use and enjoy this portion would be severely curtailed, if not altogether eliminated.

Costly Stewardship Plans

The proponents of the CAP have argued that it grants rural homeowners flexibility by permitting a homeowner to slightly reduce these restrictions and certain taxes by implementing a "rural stewardship plan." But the county itself must approve the landowner's plan and the CAP is silent on how long approvals may take, if they are granted at all, and on how extensive – and thereby expensive – a plan a landowner must submit. Further, the standards for a successful plan are ambiguous – it is difficult to tell if any homes would actually meet these standards and what protections homeowners have against arbitrary rejections by county bureaucrats.

Finally, the CAP provides no money for the development of a stewardship plan. The CAP lists numerous standards with which a landowner must comply before a plan is approved, many of which are broad, subjective and highly technical. A homeowner would have to hire the attorneys and environmental consultants necessary to prepare such a plan out of her own pocket. The costs involved in simply developing such a plan would foreclose many rural landowners from even attempting to undertake it. In any case, requiring any kind of plan only draws private citizens further under control of the government.

Regulation without Compensation

By shifting so much of the responsibility for environmental care of critical areas to rural landowners, the CAP is inconsistent with the mandates of the United States and Washington Constitutions, and the GMA itself, which protect individuals from uncompensated appropriations of private property. The constitutional provisions and the GMA reflect the idea that if property is to be appropriated from an individual for the benefit of the community, the community must compensate that individual. But while the county claims the CAP is necessary to "protect the overall county's environmental health," the CAP places the cost not on the "overall county," but on a few unfortunate rural homeowners who do not have the voting numbers or the resources to fight back.

Under the American system of government, individuals do not own their property at the sufferance of the government. The government may only use private property if it compensates the owner for such use. If county government allowed its residents to use only 35 percent of their bank accounts, retirement plans, or houses, people would be justifiably outraged. In the same way, it is neither fair nor constitutional to make a small group of homeowners bear public burdens that should be rightfully borne by all.

Fundamental fairness and the dictates of the Constitution argue strongly against the implementation of such a radical and inequitable plan. The citizens of King County already live under an extensive and complex set of state-mandated land use rules, but now even more regulation is being proposed. If change is necessary, a more balanced, cooperative approach that incorporates the interests of landowners and relies more on incentives rather than the heavy hand of government regulation offers a fairer and more effective alternative. This would also set a positive precedent for addressing environmental issues with the support of those who are actually impacted by the regulations.

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