



PIERCE COUNTY

Conservation Futures & Open Space Citizens' Advisory Board

June 23, 2022
CAB Meeting Minutes

The meeting was called to order by Thomas Ginsburg, Vice Chair, at 6:02 p.m. virtually via Zoom webinar. A quorum was present.

ROLL CALL:

CAB Members Present: Marcello Mancini, Thomas Ginsburg, Kadie Anderson, Sarah Chun, Lyndsay Gordon, Ryan Hebert, Ethan Newton, Jerome O'Leary, Susan Paganelli, Tony Paulson, Terry Reid, Patricia Villa

Staff Present: Kimberly Freeman, Katherine Brooks, Cheryl Saltzman

Maul Foster Alongi: Kate Elliott, ZZ Lundburg

CAB Members Absent: Brett Larabee (excused), Carol Paschal (excused), Heather Shadko (excused), Susan Potter

MEETING MINUTES:

Motion: To adopt the June 9, 2022 meeting notes as written. The motion was moved (O'Leary), seconded (Ginsburg) and passed unanimously.

PUBLIC COMMENTS: No public comments.

DISCUSSIONS:

A. Code Update

ZZ Lundburg (MFA) led discussion through sections of the code follow-up from previous meeting.

2.96.010 – Findings and Declaration of Purpose – adding section D

D. It is the goal of this Chapter to ensure conservation futures funds are utilized across county communities and jurisdictions to further the equitable protection of open space resources and ecosystems to benefit the current and future residents of Pierce County.

Board Questions and Comments:

Jerome clarified that this addition was regarding greater distribution of funds and Kimberly confirmed, adding that this isn't equity language, we are still coming back with equity language in the future.

Lyndsay: I really like this addition, I feel like it adds a lot of intention for trying to distribute geographically, which I think as many people stated at the last meeting that I wasn't able to attend, is very important for a countywide investment, so I'm in support of this change.

2.96.040 – Establishment of the Conservation Futures and Open Space Citizens' Advisory Board

B: At the last meeting, there was discussion regarding 2.96.040.B addition "and one representative from the local and historic Tribes of the region." The discussion was around changing "region" to "county." We made the change to "county."

Board Questions and Comments:

No comments.

E: Clarification of language for E. All Board meetings shall be open to the public and conducted in accordance with ~~as if subject to~~ the Open Public Meetings Act, Chapter 42.30 RCW.

Board Questions:

No comments.

2.96.050 – Duties of the Conservation Futures and Open Space Citizens’ Advisory Board

As discussed at the last meeting, the sections in CAB and TAC relating to duties required mirroring language. This additional language to section C is: The Board shall meet periodically, but not less than once per year, with the Conservation Futures and Open Space Technical Advisory Committee to review and discuss open space issues and priorities identified in PCC 2.966.070B and to provide a forum for open space stakeholders to network and share information on opportunities to maximize protection of open space in the County.

Board Questions and Comments

No comments.

2.96.070 – Duties of the Conservation Futures and Open Space Technical Advisory Committee

Relating to above, the language change is made to mirror both CAB and TAC sections: C. The Committee shall meet periodically, but not less than once per year, with the Conservation Futures and Open Space Citizens’ Advisory Board to review and discuss open space issues and priorities identified in PCC 2.96.070B and provide a forum for open space stakeholders to network and share information on opportunities to maximize protection of open space in the County.

Board Questions and Comments

No comments.

2.97.110 – Conservation Futures Opportunity Account

This is the discussion around changing the amount of Opportunity Account funding to 10% up to \$4,000,000 and clarification of funding source

- A. ~~Each year~~ Through adoption of the County ~~annual~~ budget, the Executive shall propose, and the Council shall consider allocating an amount of not more than ~~\$250,000 from 10% of~~ the Conservation Futures Construction Fund to be reserved for possible acquisition of exceptional open space properties selected and approved under PCC 2.97.110. At the end of the budget ~~year cycle~~, any unused funds in the Conservation Futures Opportunity Account shall be carried over to subsequent ears and shall be allowed to accumulate a fund balance not to exceed ~~\$2,000,000~~ \$4,000,000 subordinate to all debt.

Board Questions and Comments

Kimberly: Jerome had asked about “ten percent of what?” The Conservation Futures fund is actually divided into different funds, but it is 10% of the construction fund.

- B. As discussed previously, we discussed adding language to clarify the responsibility of initiating the application. Staff suggests addition of a subsection 1: The Executive shall review all Opportunity Account applications and available opportunity account funding and determine whether to initiate the application.

Board Questions and Comments

Kimberly discussed that at the last meeting there was discussion among the Board around the Executive throwing out an opportunity account application if there weren’t staff resources, if there wasn’t enough money, or if someone had applied too frequently. CAB suggested the CAB should make those decisions. Staff then talked it through and realized there was language missing to clarify the process. The steps are:

1. Application received and reviewed by CF staff
2. CF staff sends application to Executive
3. Executive reviews and decides whether to initiate application (based on work program loads with

staff and previously agreed upon projects and budget)

4. Once Executive approves to initiate, staff will bring it to the Board

For regular applications, TAC would make the decision on proceeding, but with Opportunity Account applications, there is no TAC review. Kat added that staff does look at the Opportunity Account applications, and staff scores it before sending to the CAB.

Jerome asked if Council or the Executive has authority over the Opportunity Account itself, and Kimberly stated that anything coming out of Conservation Futures funds has to come from a Council resolution, this section of code receives direction from the Executive as to whether staff time should be spend reviewing ths application and taking it to CAB prior to Council action.

Marcello asked if Gig Harbor had taken their Opportunity Account directly to Executive Dammeier or to staff and the staff brought it to the Executive? Kimberly said that all applications come to staff, and Opportunity Account applications are sent to Executive Dammeier after we've verified parcel numbers, and application materials.

Marcello asked if in the Opportunity Account process, the CAB doesn't get involved until it's been decided that the Executive wants to move forward so the CAB is really just giving it a stamp of approval, and that could be overridden by the Executive. Kimberly clarified that the role of the Executive is only to initiate the application for staff to allocate time to work on it. The CAB still reviews the project, assesses the scoring and values. CAB could decide the application isn't worth the Opportunity Account and could then send a 'not recommended' recommendation to Council.

Jerome asked for clarification on where it says "whether to initiate the application" is that the application to Council, because an application must have already been initiated to be reviewed. Kimberly confirmed that the Executive is just initiating the application process, staff can't work on it without his approval.

Kat suggested adding "to initiate the application for Board review" to clarify.

Kimberly asked if CAB is okay with the overall process. Terry said he hasn't seen a problem with it in his time on the CAB and thinks it would be difficult for CAB to evaluate the Opportunity Accounts in the time frame that is necessary for those, and Lyndsay agreed.

Section 2.97.020 – Definitions

ZZ explained that the following change relates to changing the points necessary for an Opportunity Account application to ensure that we are receiving "exceptional" properties. Kimberly added that this question is back again in part because of a recent conversation with a member of Council. She also added that the Council just passed a resolution extending the 2019 projects until December 31, 2022. We have 2-4 projects that need this extension. In the conversation, the Council member said that he struggles with the Opportunity Account because these applications deflect staff time off the already existing applications, which delays those regular cycle projects. He thinks that while the Opportunity Account is worthwhile and it's good that we have it for emergencies, perhaps the Opportunity Account really should be for exceptional opportunities, not just "D-level" work as we've got it here at 65%. She also stated that this was not direction from Council, just a conversation with a member. Kimberly also mentioned that Ethan had brought up reimbursement which would allow a jurisdiction that had the funds to go buy it and still come in and potentially get funded for it.

"Exceptional Opportunity" means a Conservation Futures proposal that will no longer be viable by the beginning of the next application and allocation process and qualifies for at least ~~60~~ 65 percent of the available Evaluation points on Table 2.97.110-1 as determined by the Department.

Board Questions and Comments

Patty: Are we seeing it where people may be avoiding the typical process and then going in for the Opportunity Account fund because they think it's easier to get in there and get their project in?

Kimberly: I don't think we've seen that. As you know, Patty, we've seen where people have scored low and their project either isn't funded or it isn't funded in the first year so they go into the Opportunity Account, but they've come in through the regular cycle. We've seen some of that in the past.

Patty: I was just thinking it would be good to somehow make sure that it's not kind of a workaround that people are trying when they don't really have a quality project.

Lyndsay: One thing on retroactive costs, part of me that likes the idea, but the thing I will say as someone who manages the budget for a public entity with a large amount of retroactive costs, you do have to be very careful about how you set up eligibility related to time on retroactive costs, otherwise you'll just have a backlog that you may never be able to fund, then you are not really creating new space. From the standpoint that they had enough money to front it for the project, and to move forward, so whether or not they absolutely need that money or if it's just that it would be nice to have that in the jurisdiction could be a consideration. I know for our grant program, which it's cleanup, so it's a very different type of thing but still involves property acquisition and other things, because of how our eligibility comes up we can have people come in and have five years and millions of dollars of retroactive costs. It makes it a little harder to manage at times. Once you open that door, it can be pretty hard to shut it.

Ethan asked if the 65% is a high score for the normal application cycle, and Kimberly said that most average in the 70's. Ethan said "I think that's a great question of what's exceptional, and to me if that's just average that's not really exceptional, so maybe it's in the 70's or 75 even. For this program, it's taking a risk that it's funding one program while not looking at it against all the other applications that are coming in that would compete against it. Maybe it should be a higher bar than that."

Ethan also said "there's really no wrong way to do any of these, it's just setting up a system that's transparent to everybody so that it is a fair playing field for people, so whether it's an Opportunity Account or a lookback period or a combination, I think that can all work. This obviously has been working well for this program, so it probably doesn't warrant any big changes to it."

Ethan asked who handled the negotiating and real estate transactions and Kimberly replied it was the sponsors. She added that smaller cities have indicated they would like the county to hire more staff to help them with this process and in the past, Parks had some capacity to assist.

Jerome agreed that the percentage should be at least in the 70's and that increase along with the time qualifier, would help separate this substantially from the normal cycle.

Lyndsay asked if the CAB could look at the median scores of projects over time, and Kimberly said she would provide that at the next meeting.

Comments from chat:

Thomas: I agree with Ethan and Patty, exceptional threshold should be raised to 75 or even 80.

Marcello: I'm on board to increasing to a minimum of 75.

Patty: If it's exceptional then the score should be higher, maybe we go 75 or something.

ZZ: We'll come back next time with the numbers.

As per discussion in the previous meeting, the addition of a section D: D. Opportunity Account projects shall close within one year of award.

Public Access

Kimberly discussed the need for a conversation and understanding around public access for Conservation Futures properties and that our attorney's read of the RCW is that public access is required, but that we do not have a definition in the code of "public access," and we don't have any requirements around that, other than requiring applicants to have public access. She added that like Ethan had said, there's a lot of ways to do this,

but transparency is important.

Kimberly explained that we have a variety of properties that provide wide range of public access, from being open to the public, only gated and closed at night, to annual or biannual tours that are set up through sponsors like Nisqually Land Trust and Great Peninsula Conservancy. Some other jurisdictions do require everything to be open all the time, but not all jurisdictions, and opened the conversation up to the Board.

Board Questions and Comments

Patty: Public access at parks and trails that are held by a public jurisdiction, a city or town, makes a lot of sense. We know that there are some of the agricultural lands you don't want people walking on, and some of the sensitive areas that we're protecting and persevering, we don't want a lot of people walking on. I'm hoping that whatever comes out of this conversation, it retains some freedom of level of broadness for the different types of properties that are being protected and preserved, to honor the purpose of the protecting and preserving them. If it means some kind of controlled tour, once every one or two years access, but something that doesn't tie (lost connection).

Jerome: I'm in full agreement, I don't think this should be a one-size-fits-all and maybe this is a type of thing where we could incorporate into our definition what public access really means. Is it access to the physical property, or is it visual access to the site from a county road? Especially when you get into sensitive areas and the agricultural areas of land that is in production, I can speak to that pretty well. The last thing that is good for the person producing anything on agricultural land or for a person coming on to agricultural land when you're in production, harvest, planting, whatever it may be, is to have the general public there. It is a bit of a safety issue as well as other issues. I love what Patty was saying, I think there's multiple definitions of this and maybe it could be incorporated in the definition or in this section, whatever is appropriate.

Lyndsay: I think that depending on the values that the property is offering, the importance of frequency of access varies greatly depending on what the purpose of the property is. It could be either definitions that vary or eligibility based on each conservation futures type, so in order to qualify for and claim conservation values you have to be able to – like if you're claiming parks and trails it needs to be open all the time, but if agricultural is your priority, maybe the minimum is a public tour or something similar, and we leave it not necessarily super defined, but provide examples but allow for more restricted access for those particular conservation values in order to preserve them. In the same way that not all public federal lands are treated the same, a lot of places are unpermitted, you can go in and out as you want, especially US Forest Service land that is a "crop" by definition from the Forest Service standpoint, where if you look at the National Parks it's a permit-based system. You don't always get to go when you want to go, if you want to go camping in it, because the priority of the agency is to preserve the integrity of the resource.

Chat questions:

Sarah: The controlled tour as long as that information is available to the public seems adequate. I agree with Jerome, safety to people visiting and sensitivity to what the property is being used for is important.

Ethan: Having public access aligned with site suitability is along the lines of what folks have been saying. I think there's also different forms of public access - there's the dawn to dusk where anybody can enter, to the tour access which is at the other end of the spectrum, and water access, and even viewable access. I think there can be a number of ways to consider what public access might be. There was a comment about is it different whether it's a public agency that owns the land or gets the funding as opposed to non-public. I do think that it's important to recognize that these are public tax dollars that are going towards this, so they are basically purchasing a property interest in the form of a conservation easement. I don't know if there should be a distinction between who owns the land, but certainly as far as site suitability that makes sense.

Tony: I was going to bring up safety in other types of setting besides agricultural. I had heard it's open all

the time to everyone, dawn to dusk would be an appropriate safety measure, especially for publicly owned properties.

Marcello: This one gets me because I think anytime we use public funds that we've got to provide access. I think a lot of valid points have been made with regards to agricultural lands and if it is wise to allow public individuals or groups to have freedom to go in whenever they want, and I agree there has to be some type of regulation. I think when we're using these public funds, there's got to be some type of bonus or recognition for a property that would allow somewhat open access to the public. There are some great properties that I've seen that would be great a great fishing area, it's a conservation area with open fishing, and to have access to that fishing area no one would know about it, and that really kind of defeats the purpose of what we're trying to do as far as creating the conservation part of it but at the same time allowing and utilizing the funds for the public who are paying these fees to do that, so I would be more inclined agreeing with some restrictions, but if it's a project that would allow access to the public, I think that should be more of a priority because it publicly funded.

Tony: Marcello, are you suggesting that we add an access criterion into the scoring?

Marcello: There's a little bit in there, but it is not specific, so I'm thinking when it falls under the public lands or open space where it's not going to be detrimental to what we're trying to protect as a group, yes. I'd definitely be open to say that the investment that we're making in these properties to conserve them, if they're more suitable for access to the public, that would give us a little bit more credibility that we're really looking out for the taxpayers and giving them the opportunity to enjoy these beautiful properties. To the point that was made, I think by Sarah, information is available to the public, how much information? From what I've seen, there's not a whole lot of information on these approved conservation projects. Where do you go find this information and how do I take my family to go enjoy some of these properties? It's very difficult to find that information unless you know where to find that information and what to do.

Kimberly: I need to follow up with you on that because yes, you are right. It is very difficult to find these properties. The CAB knows the properties but doesn't necessarily know what's open to the public. It's been an initiative of ours for a decade to get something together so at least you can find on our website where they are and how to access them and what hours they are open and who to contact, and this is where it's not only the Opportunity Account and the code update. We probably really need two staff people running the program, not just the one, which is probably why we go through so many staff people for this program. It is one of our goals.

Susan: I am curious what exactly are we trying to accomplish here tonight because I'm hearing a lot of things. I'm hearing that because it's bought by public money that there is in the code that there has to be public access depending on what kind of land. Is that incorrect?

Kimberly: The code is based on the state RCWs and our attorneys have determined that the state RCWs require public access. Our code doesn't define public access which has provided staff with flexibility on interpretation. Working farms and working forests have a tour once a year. Parks are open all the time. The City of Tacoma is struggling because they've purchased some sensitive properties and said they were going to be open to the public. but now they're thinking limited access would have been best. We've left it to the applicant to determine, but that it has to be open somehow, somewhere, sometime. The purpose of this discussion tonight is for us to hear conversation from all the different CAB members and come back to you with different proposals. We're interested in what you think needs to be in terms of public access.

Susan: Patty was saying earlier that we should probably leave that fairly broad and I agree. It's a heavy onus on some of these organizations, especially the smaller land conservations, because they have a liability as soon as that property is theirs. We have to balance that with are they able to take care of this land? Are they able to take care of that liability and have open access and what does that look like? I think it's important that we consider the people that are the stewards of the land after it is bought. It's not one-size-fits-all, so whatever we do it has to have enough leeway that it does get the public access, that is part

of it, but also that the people that are now the stewards are able to do so in a way that protects the land and protects people.

Marcello: When we define public access, public access to who? What about those that are in wheelchairs and other individuals that struggle physically to get into these public spaces, where we now have codes and laws that require certain things to be wheelchair accessible? That opens up a can of worms when we do this and I'm not opposed to being very careful in choosing which properties are safer versus this that we're probably not going to do that. When we talk about open access, we have to be inclusive.

Tony: I think there should be a definitive distinction between the properties where conservation easements have been purchased with conservation funds and outright owning of the property by the sponsor. I think there's a big difference there that conservation easements don't necessarily vibe for as much open access in my opinion.

Jerome: In response to Marcello's comment, we're on a slippery slope here in some respects. I think that in trying to do the right thing to follow the RCW and maybe getting a real clear understanding of what the RCW actually are would be really important, because if we go too far down this path, we could create a deterrent from people entering the program and utilizing the funds and conserving the land which is what we're here for. I think we have to be a little bit cautious, because when you start hearing about access to the general public as a landowner and with things to be inclusive to allow for disabled people, who's going to do those improvements and who's going to maintain them? I also still go back to some of the safety issues, and I know we have a responsibility to abide by the RCW but I think we have to be careful not to create deterrents to keep people from entering the program.

Kimberly: Thomas, Kadie and Ryan, any thoughts on public access?

Ryan: I'll have to think about that.

Thomas: I appreciate all the comments that deal with how amorphous or nebulous what we're dealing with in trying to fulfill the RCW but also be flexible. Like Patty said, honor the spirit of what the value was that we're preserving, so that if it's agricultural lands, we respect that it is a working land. I like Susan's call out to the liability to the actual stewards of the land. As we've seen during the pandemic just how valued that open space and recreational areas are, but as we increase the use, we increase the potential for misuse. In our small little jurisdiction in South King/North Pierce, we have a definite issue with the misuse of public lands, in terms of the unhoused, and illegal activities. To try and rectify that situation becomes very difficult then, it's difficult to trespass those folks on public lands. This is a very difficult needle to thread, honoring the spirit of the value but maintaining the flexibility. The one question I have is that is a threshold to actually proceed through the application process is that it has to have public access. They come with an application, and they don't have public access, it's not going to come to the CAB, is that correct? Or even the TAC? If the applicant is not even going to come in with public access, then you can't have our funds. I agree with everyone and appreciate the comments on maintaining the flexibility, honoring the liability of the stewards but ensuring that we are inclusive and equitable with the access does need to be more of a case-by-case basis.

Terry: I largely agree. This is a bit of a sticky wicket but the perspective I haven't heard yet is there are critics of our program, people who don't support tax money being put into something like this and having very limited or no public access to certain properties could become a platform for the criticism, so I just wanted to put that point out there.

From chat:

Lyndsay is asking if there will be an open conversation with TAC and sponsors, too?

Kimberly: I don't think there's going to be one conversation with TAC and CAB and sponsors. We've had two meetings with sponsors, and will have more meetings. We are just trying to keep up with CAB at this

point. We do hope to bring the TAC back as we're getting ready to finalize and adopt and just go over everything that the TAC provided comments. We can think about including sponsors in that conversation. I like that idea.

From chat:

Sarah: Referring to the land that isn't allowing public access, perhaps updates from the sponsors about what is going on with the land? The public pays for this land so I think transparency is incredibly important.

Kadie: I think public access is important, but some conservation properties may restrict access because of their purpose, example: salmon streams. I agree that it depends on the use of the property and the intended use of the property. I can see value in granting extra points if public access is included as a benefit.

Patty: Even without access, these lands are serving the community, so limited access doesn't mean the funds are improperly used.

Kimberly: This has been a very good conversation; I really appreciate it. I have lots of notes and there are things we can come back to you with.

Kimberly asked about continuing the meeting to July 7, and asked if there would be a quorum, and there will be.

OTHER BUSINESS:

No other business.

Chair continues today's meeting to July 7th at 6pm.

MEETING CONTINUED: The meeting was closed at 7:07 p.m. to be continued on July 7th at 6 p.m.