

**MASON COUNTY
PLANNING ADVISORY COMMISSION**

February 11, 2013

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1. CALL TO ORDER

The meeting was called to order at 6:05 pm by Chair Jim Sims.

2. ROLL CALL

Members present: Jim Sims, Bill Dewey, Kristy Buck, Ken VanBuskirk
and Cathi Bright.

Staff present: Barbara Adkins, Rebecca Hersha, Grace Miller

Department of Ecology: Tim Gates and Rick Mraz

3. NEW BUSINESS

Planning Advisory Commission Minutes, February 11, 2013

Ground rules for the hearings proceedings were clarified by Chair Jim Sims.

Chair Jim Sims was excused early due to illness and asked Vice Chair Ken VanBuskirk to take over the meeting.

Ken asked if it was possible to proceed outside of what was advertised. Barbara Adkins explained that since it was advertised as a workshop they could go outside of what was advertised. It was discussed in detail that it was a workshop format and not a formal presentation. The Department of Ecology had been invited to join the Board as a round table discussion.

Tim Gates, Department of Commerce, working on Assignment to the Department of Ecology submitted a Staff Report in response to comments from the January 28, 2013 PAC meeting pertaining to the Shoreline Master Program. The PAC members and staff agreed to read through the document asking questions and comments along the way.

Tim started by giving a brief explanation of how and why the State and the Department of Ecology are involved and are helping write the Mason County Shoreline Master Program (SMP). It was also explained that the current SMP deadline is December 31, 2013.

17.50.030 APPLICATION OF REGULATIONS

Q: Does the county need to regulate the entire 100-year floodplain? As it is defined by FEMA maps.

No. The SMA regulates not just waterbodies but land areas adjacent to shorelines called "shorelands." Its as simple as defining it in the definition of word shorelands.

Option: You can regulate the minimum area or you can regulate the entire 100-year floodplain.

Rebecca Hersha noted that you have to include the floodway. Ken asked if the FEMA maps have been updated. Tim clarified that no updated official maps have been received from FEMA of Mason County.

Cathi Bright stated that she would like more information on the decision to do the 100-year floodplain for the Skokomish Valley and would also like to know what the impacts would be along with the pros and cons and if there are other alternatives. Tim explained that Mason County staff had committed to using the 100-year floodplain.

Staff asked if it was necessary to do the studies and if it was possible to vote now? Or use what we currently have in play which is the 100-year floodplain? Cathi stated that she wants to know more and what the alternatives are. Her concerns are redevelopment, improvements to property, insurance, etc. The topic was discussed in detail. Tim explained that it is a simple revision to text by changing the description of the area that is "shorelands". There was no motion or final agreement on the subject other that it needed to be addressed in detail later.

Planning Advisory Commission Minutes, February 11, 2013

Q: How many miles of shoreline are regulated by the SMP?

- According to the 2012 Inventory and Characterization Report, there are 709 linear miles of shoreline that meet state criteria as “shorelines of the state” (all marine waters, lakes over 20 acres, and rivers with greater than 20 cubic feet per second mean annual flow).
- The list of streams and lakes in section 17.50.030 needs to be updated. The list only includes 598 linear miles of shoreline. It does not include all the tributaries and there are some errors in the lake table.

Recommendation for next steps:

Revise the list of streams and lake to include all areas that meet the statutory criteria as “shorelines of the state”

17.50.050 ENVIRONMENT DESIGNATIONS

Q: Is the Urban Commercial Environment designation appropriate (e.g. for the Union RAC)?

Under 17.50.050.E the purpose of the “Urban Commercial” is to “ensure optimum utilization of shoreline within urbanized areas by managing commercial development.” The designation criteria states it is for areas developed or designated for commercial development. Yet the UGAs and RACs where the designation is applied include Residential uses as well as Commercial.

Tim recommended that it be changed to just “Urban”. The purpose is to recognize areas where the county has already designated the areas for growth, you are treating them differently than the rest of the rural environment in the zoning code. This new overlay would be called “Urban”. Zoning would decide whether or not you can have commercial development on a given parcel. “Urban Commercial” was misleading from the beginning.

Cathi made a comment about the terminology and that it needs to be consistent on the maps and defining it. Otherwise it is too complicated. It is either urban or rural. The map needs to accurately reflect the area.

PROJECT CLASSIFICATION TABLE 17.50.050

Q. Where are educational and scientific research activities regulated?

They are currently unclassified and Tim suggested that staff consider developing a policy as a preferred use with an emphasis on Scientific and Educational Uses.

Planning Advisory Commission Minutes, February 11, 2013

Both staff and Rick commented that it warrants consideration. There is an existing Land Use in the Resource Ordinance that can be used as a starter for the policies and regulations on how to address and access viewing platforms by lakes or trails and to promote the appreciation of the outdoor resources. Rick noted that we want to facilitate that and it should be promoted in the SMP.

17.50.055.A.7 COMPENSATORY MITIGATION

Q. Would like discussion of 17.50.055.A.7 regarding compensatory mitigation at the February 11 meeting

Background: The first two sentences are direct from Ecology guidelines. The third sentence clarifies that “The County may also approve use of alternative mitigation practices such as in-lieu fee programs, mitigation banks, and other similar approaches provided they have been approved and sanctioned by the Department of Ecology and other applicable state and federal agencies.”

This sentence is optional. Note that while it does provide the county clear authority to accept alternative state-approved mitigation approaches, this regulation would not obligate the County to authorize participation in a given in-lieu fee program or mitigation bank.

Ken had concerns with the Restoration Plan and asked if there was one, if so, was a copy available to the PAC. It was explained that a draft should be available online. Ken noted that the Board Members should see a copy and have time to comment on it.

17.50.055.A.9 SUBDIVISION OF LAND CONSTRAINED BY CRITICAL AREAS

Q. Is this provision gratuitous? Is it redundant with existing subdivision regulations? Should the phrase “or would be considered non-conforming” be deleted?

Reinforces the existing codes.

17.50.055.B.1 CRITICAL AREAS DEFINITION

Planning Advisory Commission Minutes, February 11, 2013

Q. Can the SMP include a definition of critical areas in the SMP?

Yes. Ideally the County would use the Critical Areas definition in the Resource Ordinance. However, the definition is dated. It states:

Critical Areas shall include Designated Wetlands, Aquifer Recharge Areas, Frequently Flooded Areas, Landslide Hazard Areas, Seismic Hazard Areas, Erosion Hazard Areas, and Aquatic and Terrestrial Management Areas, as defined by this Chapter.

Recommendation: Include a definition of critical areas that uses the final terms used in the Resource Ordinance, e.g., Critical Areas. Critical areas shall include Designated Wetlands, Aquifer Recharge Areas, Frequently Flooded Areas, Landslide Hazard Areas, Seismic Hazard Areas, Erosion Hazard Areas, and Fish and Wildlife Habitat Conservation Areas as defined by the Mason County Resource Ordinance, MCC 17.01.

It was discussed in detail the mapping, designation of critical areas and setbacks. Pat VanDeHey, commenting from the audience, stated that the maps were in question. They don't know where the designated areas are, the two maps. The City map and the County map do not match, they are opposite. Ken commented that a group is being formed to address the mapping issue in the future.

17.50.055.2.5 BUFFERS AND SETBACKS FOR AGRIBULTURAL LANDS

Q. The wording related to agriculture is different than presented at the January PAC workshop.

17.05.055.2.5 is essentially an internal cross-reference to the Agricultural regulations (MCC17.50.060(1)). Those regulations reflect the legislative directive that SMPs "shall not require modification of or limit agricultural activities on agricultural land." The terms "agricultural activities" and "agricultural land" are broadly defined consistent with the SMA (RCW 90.58.065). It is not necessary to include Regulation 5 in section, but it was added because questions often come up about whether buffers apply to existing agriculture. Agricultural activities are also statutorily exempt from the requirement to obtain an SDP.

Public Comment: Eric Schallon noted that existing agriculture is hands off from this process. He also asked about changing or rotating from crops. Another gentleman asked if it had to be zoned as agriculture. Rick Mraz, confirmed that it does not need to be zoned agriculture, just needs to be used that way. Eric also asked for clarification on what the downtime was on land for inactivity. Rick explained that it would be reconciled with the Resource Ordinance which does contain some provision on the subject.

Planning Advisory Commission Minutes, February 11, 2013

B. CRITICAL AREAS

1. Applicability
2. Buffers and Setbacks
3. Wetlands
4. Landslide Hazard Areas

17.50.055.J EXISTING RESIDENTIAL STRUCTURES

Q. What is the statute authorizing classification of existing residential structures as "legal conforming"? Can staff prepare optional regulations regarding existing residences?

RCW 90.58.620 provide local governments an option to consider legally established residences as conforming structures in their SMPs even if they don't meet regulatory standards such as buffers and setbacks.

90.58.620 New or amended master programs – Authorized provisions.

- (1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing: (a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and (b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.
- (2) For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.
- (3) Nothing in this section: (a) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures. [2011 c 323 § 2.] Notes: Findings == 2011 c 323: "(1) The legislature recognizes that there is concern from property owners regarding legal status of existing legally developed shoreline structures under updated shoreline master programs. Significant concern has been expressed by residential property owners during shoreline master program updates regarding the legal status of existing shoreline structures that may not meet current standards for new development. (2) Engrossed House Bill No. 1653, enacted as chapter 107, Laws of 2010 clarified the status of existing structures in the shoreline area under the growth management action prior to the update of shoreline regulations. It is the public interest to clarify the legal status of these structures that will apply after shoreline regulations are updated.

Planning Advisory Commission Minutes, February 11, 2013

Staff have prepared two options:

Option 1: Revise 'Section J' to address concerns raised by the PAC at the January 28 meeting. This option classifies existing residences as "conforming" even if they don't meet current standards such as buffers and setbacks, and sets limits on their expansion.

Option 2: Delete 'Section J' and incorporate the regulations for existing residential structures into Section K, Nonconforming Use and Development. The intent of this option is to provide identical legal protection for existing residences but avoid the complications of using the term "conforming" to describe structures that do not conform.

The topic was discussed in length. There was some public comment regarding what was allowed and why not replace the word "conforming" with "grandfathered". It was determined that it was a topic that was to be looked at closely and that the Board will address it. There was discussion on what would happen if your existing residence burnt down and if you would be able to rebuild. Staff explained that you could rebuild within a 2-year time period as long as you permitted it.

Constance Ibsen stepped forward to discuss Shoreline Environmental Designation in Union. She also submitted a letter regarding the Union Rural Activity Center Shoreline from the Hood Canal Improvement Club. Constance asked if staff could talk about the designations and what they meant. She explained that Union is not Residential or just Commercial, but it's messy little pockets as it currently is zoned now. The people want to know if there is any new development or redevelopment, that they want some input in it. She asked if it was possible to change to Rural Residential with areas that are Commercial or Ag. Tim explained that it could be changed. They need to come up with a new purpose and criteria and map it. But if it wasn't mapped correctly, the start and end points, based on the existing criteria, which should be submitted as a comment. Constance stated that they do not want to be Urban at all. Cathi Bright suggested that depending on the actual use of the parcel in question, you might make a different designation. Tim explained the uses and what standards are allowed.

Ken wanted to make a note about the time and how the workshop was moving. He also asked the public if there was anyone that had any comments on what was advertised so they did not have to wait until the end of the meeting.

Constance asked if Staff would recommend the changes to Union as Residential with pockets with existing Commercial if she send a letter with supporting documents to the Board.

Monica Harle asked who would be the new contact person for the County. Rebecca commented stating that she would be stepping in to the position.

Planning Advisory Commission Minutes, February 11, 2013

A man commented on Aquaculture and how it is managed and developed. He stated that he felt the regulations were not as friendly with Aquaculture and that it was written by industry. There was in-depth discussion regarding the aquaculture industry and how it does impact Mason County.

There was discussion regarding Net Pen Regulations off of Hood Canal and the language listed in the current draft of the SMP. It was questioned why the Net Pen Regulations were listed. Tim stated how it calls out Hood Canal specifically, and how there are other marine waters that could be sited with Conditional Uses, which is listed as #2 under B. Finfish Net Pen Regulations.

B. FINFISH NET PEN REGULATIONS

1. Because of persistent low dissolved oxygen conditions, finfish net pen facilities shall not be located in the waters of Hood Canal, except for limited conservation needs targeting the cultivation of wild salmon stocks during a limited portion of their lifecycle to enhance restoration of native stocks when such activities involve supplemental feeding and no use of chemicals or antibiotics.

It was confirmed that a permit was still required by the County to use the net pens. Eric Schallon commented that the concern from the Tribe was they do this now as part of their current fisheries program and from the Tribe's perspective they were concerned about being able to be stewards and managers of their resource. Teri King suggested that County staff call the Policy Office of the Skokomish Tribe and ask them the specific questions to make sure that staff understands clearly what the intent was. Tim asked Cathi if it was the exception language that was the issue. Cathi was only suggesting that the Finfish Net Pens may be considered as a conditional use and strike #1 altogether. Staff discussed in detail, but no motion was made.

C. COMMERCIAL GEODUCK AQUACULTURE

Tim discussed the Geoduck regulations, explaining that it is in direction of State Legislature. You will find the same language in the State rules. Cathi asked what happens if the State Regulations change, how does Mason County regulate that? What if the RCW or the WAC changes? Tim explained that It depends if Legislature says to address or adopts those rules would then have to be applied to every Master Program in the State.

A man asked about policing and enforcing the rules. Staff explained that both the County and Ecology have Enforcement Departments and regulations.

Planning Advisory Commission Minutes, February 11, 2013

Rebecca wanted confirmation from the Board regarding the comparison of the 100-year floodplain issue with the shoreline jurisdiction and the time she will spend comparing the differences. Or would the Board like her to go to the current SMP jurisdiction, which is the floodway plus 200 feet, but does not include the entire floodplain. Cathi asked if there was anyone advocating for the way it was done? It was determined that the Citizens Advisory Committee, a consultant and the Skokomish Tribe had an interest in it. Eric stated that the Tribe should be called. Rebecca agreed to contact the Skokomish Tribe and speak with them regarding the issue prior to spending a considerable amount of time comparing the differences.

Jerry Richert and Marley Young submitted a letter of comment to the Board. Marley made comments on behalf of Jerry with his concerns regarding Agriculture, Skokomish Valley and the SMP. He also had concerns regards the SMP and the FEMA floodplain layers and flooding with existing shorelines and procedures. Marley also commented that the mouth of the North Fork of the Skokomish River changed and that the SMP is incorrect. The issue of Cattle Pads was also discussed. Tim asked if the jurisdiction could be expanded to include the 100-year floodplain or add it to the Flood Prevention and not to the SMP. Marley said that the ranchers have asked the County and have yet to receive any instructions on how to get cattle pads to save the cattle. Marley added that he wants the Staff and the Board to know what the rules and regulations are for shorelines and FEMA buffers and to follow those rules and use those as tools for the landowner in making a decision.

Jim Reece handed out a letter to the Board on boating and the SMP.

There were no additional comments from the public.

The Board discussed the workshop and what the next agenda should be. It was determined that the next agenda will be General Regulations of the SMP and the next meeting will be on Monday, Feb. 25.

Bill Dewey asked to be excused at the next meeting scheduled for Feb. 25.

Adjournment at 9:31 p.m.