

**ISLAND COUNTY PLANNING COMMISSION
SUMMARY MINUTES
PARKER HALL, OAK HARBOR, WA
TUESDAY NOVEMBER 13, 2007**

	<i>Members Present</i>	<i>Members Absent</i>
<i>District 1</i>	<i>Val Hillers</i>	
	<i>Ray Gabelein</i>	
	<i>Mike Joselyn</i>	
<i>District 2</i>	<i>Sheila Crider</i>	
		<i>Bill Massey</i>
	<i>Alan Schell</i>	
<i>District 3</i>	<i>Wayne Havens</i>	
		<i>Deb Eidsness</i>
		<i>Scott Yonkman</i>

Meeting called to order at 7:04 p.m. by Chair, Val Hillers with a brief explanation of the items on the Planning Commission Agenda.

ROLL CALL

Mike Joselyn, Alan Schell, Val Hillers, Sheilah Crider, Ray Gabelein, Wayne Havens

APPROVAL OF THE MINUTES

September 18, 2007, and October 2, 2007

Sheilah Crider moved to accept both minutes as written, Ray Gabelein seconded the motion; the motion carried unanimously.

ITEMS FROM THE PUBLIC

NONE

UNFINISHED BUSINESS

Public Hearing to review the Draft Wetlands Critical Area Ordinance.

Val Hillers

Advised that the Planning Commission will not be making any decisions at any of the next three public meetings, the purpose is to hear public opinion of what has been drafted. The Planning Commission will deliberate in December and make decisions about the Planning Commission's recommendation to the Board of Island County Commissioners. Questions posed by the public will be added to the record, these comments are very helpful to the Planning Commission. They help shape the recommendation made to the Board of Island County Commissioners.

Some questions may be easy to answer and may be done immediately; other questions may require some additional amount of research and may not be able to be addressed tonight. It is helpful when the comments are specific. The Planning Commission is

appreciative of comments that lend general support or opposition to the program, but it is easier to respond to comments if specifics are provided such as page numbers, code sections, individual sentences or paragraphs, particularly if there is something someone feels should be changed.

Planning Director, Jeff Tate provided an overview of the proceedings and process:

Public Hearing vs. Public Meeting

A public hearing is the opportunity for people who have an interest in a proposal the Department is advancing to the Planning Commission to raise concerns, ask questions, make comments, but it is not the only opportunity. People who would prefer not to talk in a public forum or think of a question after reviewing the documents may submit written comments, all of which go into a Record. The Planning Commission deliberates on what they have heard and what they have read in the Record.

The next stage is the public meetings, which will be held in December. These meetings consist of the Planning Commission meeting in a public venue, but instead of accepting testimony from the public, they talk. They talk to each other; they talk about what they've heard from members of the public who have attended meetings, what they've seen in the Record such as written public comments, items from staff and consultants. They question staff until they come to a determination.

Establish a Deadline for Submitting Comment

A deadline will need to be set to allow time for staff to gather and transmit to the Planning Commission all public comments received with sufficient time for the Planning Commission to review them prior to deliberation.

Schedule of Hearings

Public Hearings:

- Nov. 13, on the north end of Whidbey Island in Oak Harbor
- Nov. 20, on Camano Island
- Nov. 27, on the south end of Whidbey Island in Freeland

Deliberations:

- Dec. 11 Coupeville, Commissioner's Hearing Room
- Dec. 13 Coupeville, Commissioner's Hearing Room, if required

Planning Commission Action

- Dec. 18 Coupeville, Commissioner's Hearing Room

Background

Periodically all cities and counties in the State of Washington have to update their wetland regulations. Our process started in 2004 for the Planning Department. It has been a long process of gathering information to better understand our circumstances in Island County and also better understand science that exists pertaining to wetlands. The process involved:

Forming the Wetland update team
County Planning Dept. Staff
Keith Dearborn, Attorney
Dr. Paul Adamus, Lead Scientist
State Agency Peer Review Group
State Department of Ecology
State Department of Fish & Wildlife
State Department of Natural Resources
Community, Trade and Economic Development
Professional Peer Review Group
Individuals who practice in the field, wetland specialists and
members from University of Washington, University of British
Columbia, University of Maine

Phase I Report: Wetland Profile of Island County

This team worked on the Phase 1 report, titled “Wetlands of Island County, Washington Profile of Characteristics, Functions and Health” which was put together by Dr. Paul Adamus. This step was taken to understand the effectiveness of Island County’s wetland protection dating back to 1984. There was a lot of mapping through aerial photography analysis, the Department went out with property owner permission and visited 100 wetlands to evaluate health and previously issued permits were also reviewed.

Phase II Report: Best Available Science

The Phase 2 report, titled, “Best Available Science for Wetlands of Island County, Washington: Review of Published Literature”. This report essentially looked at existing literature, trying to discern whether or not that literature applies to circumstances in the County. For example science that is applicable to an alpine wetland in the Rockies would not necessarily have relevance here in Island County.

The task was to evaluate the science that had been created. The State Department of Ecology put out some guidance documents to help local jurisdictions through this process; this document and any newer science published after the guidance document were reviewed and taken into account in the development of the Phase II Report.

These are some of the guiding principles as the County moved through this process. Island County opted to develop a Protection Program that recognizes our uniqueness, using the guidance document and incorporating certain principles of the program that DOE put together but also recognizing the unique circumstances of Island County.

The Department was trying to accomplish something that was a little easier to use than what we was seen in the DOE materials, something that allowed the landowner to have less reliance on paid specialists. Trying to use words more than numbers, some of the DOE materials focused on rating wetlands based on a score. We tried to put the rating into words that might be more meaningful and easier to talk about during such things as a permit process. We also wanted to have a program that might be looked at more favorably

by landowners if they had more say in how their land is managed by having more options and flexibility.

In May 2007 The Initial Draft was a Hybrid of DOE's Approach

The initial draft document expanded on DOE's guidance document with local circumstances incorporated. It had a heavy emphasis on public education and outreach, trying to bring property owners into the process. To show the property owner what may be on the property, why it's important and then providing the options and flexibility by building incentives into the program. Certain trends were seen over the years that were encouraging, such as the percentage of land cleared on certain pieces of property was declining. The department tried to capitalize on this by building incentives that foster that trend to continue. Other trends needed to be discouraged from continuing by recognizing those and building that into the system.

Community Outreach

This has been a big emphasis over the last couple of years with direct mailers, the use of different media, such as KWDB radio in Oak Harbor, all in an attempt to get the word out as to what is going on. Talking more with the press, conducting workshops, trying to take information out into the different neighborhoods, rather than only at the County Seat in Coupeville. The second countywide mailer sent out in early May to all landowners providing information.

Highlights of Revised Program

Existing agricultural activities are actually regulated under a different section of rules. Agriculture has different impacts than development does so there is a different ordinance. The draft rules before the Planning Commission do not apply to existing agricultural activities; those were adopted under Ordinance C150-05, in May, 2006.

Highlight Definitions

The draft emphasizes words to associate names and visuals with the different types of wetlands rather than just a numbering system. The different terms were also taken and attached to a categorization system, A through E. On page C35 of the spiral notebook, Island County's Wetlands Update Planning Commission Draft, has the names of the type of wetland in each of these categories. It is important to refer back to the definitions in the ordinance to see what a Mature Forested Wetland is, what characteristics define Delta Estuaries, Bogs or Mosaic Wetlands. Each term is defined, it will talk about tree size, dominant species, size of area that is open water; a lot of emphasis is placed on determining the type of wetland by using these definitions then once the wetland is defined, the emphasis shifts into which category that particular wetland belongs.

A Category A Wetland is considered a type of wetland that is the most sensitive or has the highest value, whereas the Category E Wetland is on the lower end and would not require the same level of protection. Each category translates into different setbacks.

Highlights Determining Buffers

Under Tab C, pages C33 - C38 the bulk of information related to determining a buffer is found. This is the section most people have really focused their interest in trying to understand because this is the portion that relates to how this ordinance applies to their particular property. There are four steps you have to walk through in order to determine what your buffer is or what the setback is on your piece of property.

1. Step 1 to determine buffer size is the land use INTENSITY
 - a. Three categories: Low, Medium and High, based on the intensity of the land use activity. Land Use Intensity will be determined on three considerations: The Proposed Use or Structure and the Size of the Lot, the amount of Cleared Area proposed, and the potential adverse impacts to Wetland Functions that may be generated by the Development Proposal.
2. Step 2 is to determine the TYPE OF WETLAND category the wetland fits into. The classification that provides the greatest protection shall be used for Wetlands that exhibit the characteristics of more than one type.
3. Step 3 is to determine the HABITAT FUNCTIONS by using the Wetland Identification Guide and the scoring system found within it. It is a self assessment done by the property owner that would be submitted with a building permit, which would then be double checked by the County in the permit process. It was designed this way to keep the property owner from having to hire a biologist to do the work.
4. Step 4 is to determine if there are any ADJACENT SLOPES surrounding the property. A steep slope would potentially lead to a larger buffer due to water quality degradation from runoff.
Water quality buffers are established based on the Wetland's sensitivity to disturbance, Wetland Type and the Land Use Intensity proposed by a Development Proposal.

THE WETLAND'S IDENTIFICATION GUIDE

The Wetland's ID guide is a color brochure. It contains lots of pictures to help a property owner identify a wetland on their property. It walks you through looking at the water, the soils, and the plants may exist on your property in determining whether or not it qualifies as a wetland. The second part of the guide, once you have identified that you do have a wetland on your property would then be used. It has the scoring sheets you would use on the application. It talks about intensity, it talks about habitat, and it talks about water quality, leading you step by step to a conclusion of what the setback on your property would be.

THE RURAL STEWARDSHIP PLAN

This was included in the program to encourage land owners to impose certain practices on their property that are difficult to regulate, such as use of fertilizers, managing pet waste, managing pets that run into wetlands that perhaps could have an impact on the habitat. The Rural Stewardship Plan outlines practices a land owner could apply to their property that would allow the owner certain benefits. One such benefit is the possibility of eligibility in the Public Benefit Rating Systems that provides tax reduction anywhere

from 30% to 90% of property value. Another possible benefit would be to reduce the intensity of the land use which in turn would provide a reduction in the setbacks on the property, thus giving the landowner more control over their property by the choices they make. It is essentially a contract that runs with the property agreeing to do certain things on their property. It would also make the landowner eligible for expedited permit review for any permits submitted.

The Portions of the Process Completed to Date:

- ✓ State Environmental Policy Act requires the evaluation of the environmental impacts of adopting any regulations. That process has been completed.
- ✓ The draft proposal has also been advanced to state agencies for their review. There is a sixty day comment period for those agencies to respond with any comments on the proposal. That comment period has ended as well.

The Next Steps:

- ✓ Public Hearings; gathering comments and feedback from the public
- ✓ Planning Commission will deliberate
- ✓ The Planning Commission will issue their recommendation
- ✓ The recommendation will be transmitted to the BOICC
- ✓ The BOICC will then consider adoption into County Code

Chair Hillers opens the floor to public comments.

Joe Janosek 935 Bunch Lane, Oak harbor

Commented on the Rural Stewardship Plan, stated he bought 9 acres to plant blueberries only to discover after researching water quality and soil quality that he can only use 1.5 acres of the property. States after reviewing the new categories he is now in a class E wetland by the new draft ordinances and is more pleased by this new approach. He asks the Planning Commission to be sensitive to the individual landowner.

Bob Fioritio, 3758 Hoffman Rd. Oak Harbor

Stated he lives on acreage that has a Class B Wetland and a Class A Wetland and it has been very expensive process to develop and use his land under the old guidelines. He said he was able to use the Wetland Guide to evaluate his land himself and had his biologist follow up to determine if he were correct. There was only a small discrepancy. He explained that since the change in categories with this new draft ordinance, his wetlands will be more accurately defined and he will now be able to include a firebreak around his home. This program in his opinion is excellent; it takes the one classification that fits everybody and tries to benefit the ecology and changes it to a system that fits the individual property more accurately. He stated he would like to acknowledge the team that has worked on this. He states he is very appreciative of those that have helped him work through this. It has been very informative and the Department has been very helpful. He stated the Wetlands Identification Guide is excellent, with the guide he was able to

figure it out on his own. He is very encouraged by the Rural Stewardship Program. Overall he stated he is happy with the way this program is working.

Rufus Rose, 6529 Four Sisters Lane in South Whidbey

Stated he had four points he would like to make and would also submit them in writing.

1. He stated he was concerned about the potential for proportion, there is a potential in this draft to have 1/43rd of an acre, (a thousand square feet) require a 300' buffer. That comes out to 7.29 acres of buffer for 1/43rd of an acre. He stated that seems excessive. He hopes the Planning Commission could come up with some kind of a formula that would recognize proportionality, especially for the smaller wetlands.
2. He believes that owning property with Wetlands or a stream should be desirable and beneficial to property owners, and beneficial to a variety of wildlife. Sadly many property owners and prospective property owners feel otherwise. Sadly many regard owning wetlands or streams unnecessarily and unfairly restrictive because it restricts or prohibits the reasonable use of the property. He asks the Planning Commission to request staff and consultants to provide a report that documents owning property with wetlands or streams is a positive rather than a negative for human uses, including agricultural uses as well as wildlife uses and other environmental benefits. Stated he believes the Planning Commission should have such a report before it is forwarded to the BOICC.
3. He stated he would also like the general public and the Planning Commission to have a list of incentives that this draft contains for property owners who want or need to restore or enhance wetlands or streams.
4. Extreme environmentalism seems to rely on what is called the precautionary principle. Roughly interpreted that suggests, take no risks. So a claim of potential risk or damage to any environment on a property could become as good as proof, because then you have to prove that it isn't a problem. At the same time we are encouraged to apply what is called, Best Available Science, it seems inconsistent with rural property ownership. Just a claim that there may be some environmental problem, with no proof and the application of the precautionary principle puts a burden on a property owner that is inappropriate.

He next stated he would like to comment on the Focus Sheet regarding

EXISTING AGRICULTURE NOT AFFECTED

Stated there is growing interest in home and organic gardening for personal and commercial uses, he asked the Commission to acknowledge this interest in the document and facilitate conversion to new agricultural land. Stated there will be a desire for increased agricultural land for economic and health benefits and would like to see this addressed.

EFFECTIVE DATE

Concerned that there is insufficient time for the reports he asked the Planning Commission to require of staff in his first two comments to be done and made available to both the Planning Commission and the public in the time discussed in the focus sheet.

MORE UNDERSTANDABLE / EASIER TO READ

Stated that science maybe complex, but plain writing is not complex. He requested the Planning Commission require the Flesch Report be used to check whether the document is easy to read. He explained he has made this request repeatedly of the Planning Department since 1975 and asks the Planning Commission to require it.

DEFINITIONS WERE REFINED

He stated that four are listed, asked if those were the only definitions refined, if not what are the others.

ELIMINATING THE NEED FOR SOME TYPES OF WETLANDS TO BE EVALUATED FOR HABITAT

He stated he felt it would be useful to identify before the next presentation on Camano and south Whidbey, which types of wetlands would have a pre-determined buffer relative to land use intensity. He stated he would like to see these brought to the publics attention before the public comment period is over.

ADDITION OF LOW IMPACT DEVELOPMENT

He would like to know what science is relied on to determine high, medium and low intensity development.

ADDITION OF MORE PLANTS AND IMPROVING CLARITY OF LANGUAGE

Stated his comment on this topic is a request to identify which plants have been added to the common non-native plants and have this added to the next presentation.

He continued by asking for the Commission to please confirm Miller Lake as a class A wetland, stated he doesn't think it qualifies. Concerned that many rural wetlands are not mapped, concerned that many property owners are not aware that they have potentially regulated wetlands, nor will they until they try to do something with their property. Regarding the reliance on the Public Benefit Rating System to reduce taxes, he stated it is his understanding that the Assessor has a duty to value property on comparable sales. He stated it is his belief that over time, properties that are in the Public Benefit Rating System will sell for as much or more than properties that are not in the Public Benefit Rating System. He stated it would be beneficial to have a clear understanding by confirming with the Assessor how these properties are valued.

He stated his next concern was regarding Mature Forested Wetlands, he is concerned about putting a bounty on big trees. If trees that attain a certain size deserve more protection, he is afraid they will be cut by knowledgeable property owners before they attain that size. He felt if you want to encourage people to let the trees grow don't make it so that you can't cut them. Don't punish them for letting them grow really big. He stated we want wetlands to be something people like to have, a desirable feature.

Ann Brett 2814 Alpine Dr., Oak Harbor

Stated she believes she has a class A wetland and she believes it is growing. Due to the growing development around her a lot of runoff comes on to her property. As a result she feels less and less of her property is hers. Stated the additional water that comes onto her property encourages snake grass or meadow grass to grow and it keeps encroaching and she would like to know at what point the delineation of the wetland ends. If you can't mow it anymore it just keeps growing and growing and she is concerned that the wetland is taking over more and more of her property.

Keith Dearborn responds to Ms. Brett's question. If there is a wetland, the expansion of that wetland from storm water runoff is not considered a wetland. State law considers 1990 a cutoff date, when the GMA went into effect; wetlands artificially created from storm water dumping on your property do not qualify as a wetland.

Doug Wirth 1695 North Boon Rd. Oak Harbor

He asked for clarification regarding the wetland he put on his farm by way of collection point for runoff from the barns, planted with non-native vegetation. Since this was done after 1990 it would not qualify as a wetland?

Mr. Dearborn stated that it depended on whether the property itself was a wetland prior to the addition of this artificial wetland.

Mr. Wirth stated it was not. His next concern related to an area on the back of the farm there is a 12 acre parcel containing peat; he has farmed the property, in the last 6 years it has actually been getting dryer. How long does it remain a class E wetland, knowing that the hydric soil will never change? Land use changes of people dumping water on a property or adjacent property owners pulling water out of the water table will amount to changes on the surface, soils won't change, topography won't change for the most part but the surface water will change. He wanted to know what the review process would be for the changes that occur due to land use activities.

Jeff Tate responded. There is a water monitoring component built into the program that is in the ordinance which does guide us through a mapping exercise and evaluations. There is also a provision built into the Code about correcting the maps instigated by either the landowner or by staff.

Rufus Rose

Added a comment, stated he forgot to mention his concern of trees growing in a buffer adjacent to agricultural land; he is concerned about the shade impact on agriculture and must be considered when you prohibit trimming those trees in a wetland. Wants to confirm having peat is not enough to be considered a wetland.

Chair Hillers asks when the Planning Commission would like to have the public comment period end.

Sheliah Crider asked about the turn around time for staff to compile and get the comments to the Planning Commission?

Jeff Tate responds the November 30th date allows the last of the comments to be compiled and transmitted with at least one week for the Planning Commission to review.

Alan Schell moves to close public comment on November 30th Mike Joselyn seconded the motion, which carried unanimously.

Meeting adjourned at 8:42 p.m.

Respectfully submitted

Paula Bradshaw
Administrative Assistant